

The **NORTH CAROLINA REGISTER**

IN THIS ISSUE

CORRECTION

Wildlife Resources Commission

FINAL DECISION LETTER

TAX REVIEW BOARD

PROPOSED RULES

Agriculture

Cosmetic Art Examiners

Economic and Community Development

Environment, Health, and Natural Resources

Human Resources

Insurance

Labor

Public Education

RECEIVED

FINAL RULES

FEB 20 1992

Revenue

LAW LIBRARY

RRC OBJECTIONS

RULES INVALIDATED BY JUDICIAL DECISION

ISSUE DATE: FEBRUARY 14, 1992

Volume 6 • Issue 22 • Pages 1637-1741



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

ADOPTION AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of
Administrative Hearings, ATTN: Rules Division, P.O.
Drawer 27447, Raleigh, North Carolina 27611-7447, (919)
733-2678.

NORTH CAROLINA REGISTER



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ISSUE CONTENTS

I. CORRECTION

Wildlife Resources Commission .1637

II. FINAL DECISION LETTER

Voting Rights Act.....1640

III. TAX REVIEW BOARD

Orders of Board.....1641

IV. PROPOSED RULES

Agriculture

Markets 1642

Plant Industry.....1642

Veterinary Division 1645

Economic and Community Development

Alcoholic Beverage Control
Board.....1648

Environment, Health, and Natural Resources

Land Resources 1720

Human Resources

Medical Assistance 1703

Insurance

Engineering and Building
Codes.....1704

Labor

Elevator and Amusement
Device Division.....1712

Licensing Board

Cosmetic Art Examiners 1723

Public Education

Elementary and Secondary.....1721

V. FINAL RULES

Revenue

Departmental Rules 1729

VI. RRC OBJECTIONS.....1731

VII. RULES INVALIDATED BY

JUDICIAL DECISION.....1736

VIII. CUMULATIVE INDEX 1738

NORTH CAROLINA REGISTER
Publication Schedule
(January 1992 - December 1992)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	* Earliest Effective Date
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01/02/92	12/09/91	12/16/91	01/17/92	02/01/92	02/20/92	04/01/92
01/15/92	12/20/91	12/31/91	01/30/92	02/14/92	02/20/92	04/01/92
02/03/92	01/10/92	01/17/92	02/18/92	03/04/92	03/20/92	05/01/92
02/14/92	01/24/92	01/31/92	02/29/92	03/15/92	03/20/92	05/01/92
03/02/92	02/10/92	02/17/92	03/17/92	04/01/92	04/20/92	06/01/92
03/16/92	02/24/92	03/02/92	03/31/92	04/15/92	04/20/92	06/01/92
04/01/92	03/11/92	03/18/92	04/16/92	05/01/92	05/20/92	07/01/92
04/15/92	03/25/92	04/01/92	04/30/92	05/15/92	05/20/92	07/01/92
05/01/92	04/10/92	04/17/92	05/16/92	05/31/92	06/20/92	08/03/92
05/15/92	04/24/92	05/01/92	05/30/92	06/14/92	06/20/92	08/03/92
06/01/92	05/11/92	05/18/92	06/16/92	07/01/92	07/20/92	09/01/92
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07/01/92	06/10/92	06/17/92	07/16/92	07/31/92	08/20/92	10/01/92
07/15/92	06/24/92	07/01/92	07/30/92	08/14/92	08/20/92	10/01/92
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11/02/92	10/12/92	10/19/92	11/17/92	12/02/92	12/20/92	02/01/93
11/16/92	10/23/92	10/30/92	12/01/92	12/16/92	12/20/92	02/01/93
12/01/92	11/06/92	11/13/92	12/16/92	12/31/92	01/20/93	03/01/93
12/15/92	11/24/92	12/01/92	12/30/92	01/14/93	01/20/93	03/01/93

* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

WILDLIFE RESOURCES COMMISSION

15A NCAC 10C .0305

Correction to the notice as published in the *NORTH CAROLINA REGISTER*, Volume 6, Issue 20, pages 1542-1545 on January 15, 1992.

In entering the notice for publication in the Register, the amendment to Paragraph (a) to change the creel and size limits for Red Drum was not shown. The amendment as filed by the agency is shown in **BOLD ITALIC**.

The Wildlife Resources Commission will extend the comment deadline from February 15, 1992 to March 3, 1992. Written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15 NCAC 10C .0305.

The proposed effective date of this action is April 1, 1992.

The public hearing will be conducted at 10:00 a.m. on January 30, 1992 at Room 386, Archdale Building, 512 N. Salisbury St., Raleigh, NC 27604-1188.

Reason for Proposed Action: To provide consistent creel and size limits and seasons for striped bass and consistent creel and size limits for red drum.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from January 15, 1992 to February 15, 1992. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury St., Raleigh, NC 27604-1188.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0300 - GAME FISH

.0305 OPEN SEASONS: CREEL AND SIZE LIMITS

(a) Generally. Subject to the exceptions listed in Paragraph (b) of this Rule, the open seasons and creel and size limits are as indicated in the following table:

GAME FISHES	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON
Mountain Trout:			
Wild Trout Waters	4	7 in. (exc. 15)	All year (exc. 2)
Hatchery Sup- ported Trout Waters	7	None	All year, except March 1 to 7:00 a.m. on first Saturday in April (excs. 2 & 3)

CORRECTION

Muskellunge and Tiger Musky	2	30 in.	ALL YEAR
Chain Pickerel (Jack)	None	None	ALL YEAR
Walleye	8 (excs. 9 & 10)	None (exc. 9)	ALL YEAR
Sauger	8	15 in.	ALL YEAR
Black Bass: Largemouth	5 (exc. 10)	14 in. (excs. 4, 8 & 11)	ALL YEAR (exc. 13)
Smallmouth and Spotted	5 (exc. 10)	12 in. (excs. 4, 8 & 11)	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spot- ted or Speckled)	None	12 in.	ALL YEAR
Flounder	None	13 in.	ALL YEAR
<i>Red drum (channel bass, red fish, puppy drum)</i>	~~None~~ <u>5</u>	~~14~~ <u>18 in.</u>	<i>ALL YEAR</i>
Striped Bass and their hybrids (Morone Hybrids)	8 aggregate (excs. 1 & 6)	16 in. (excs. 1, 6 & 12)	ALL YEAR (excs. 6 & 16)
Kokanee Salmon	7	None	ALL YEAR
Panfishes	None (excs. 5 & 14)	None (exc. 14)	ALL YEAR (exc. 5)
NONGAME FISHES	None	None	ALL YEAR (exc. 7)

(b) Exceptions

- (1) In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam, and in John H. Kerr, Gaston, and Roanoke Rapids Reservoirs, the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches.
- (2) In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Nantahala River and all tributaries (excluding impoundments) upstream from Nantahala Lake, and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing.
- (3) Under an agreement with Tennessee, the minimum size limit on trout in Calderwood Reservoir is seven inches.
- (4) Bass taken from streams designated as public mountain trout waters or from Calderwood Reservoir may be retained without restriction as to size limit.
- (5) On Mattamuskeet Lake, special federal regulations apply.

CORRECTION

- (6) In the inland fishing waters of Cape Fear, Neuse and Tar Rivers and their tributaries extending upstream to the first impoundment, the daily creel limit for striped bass and their hybrids is one fish and the minimum length limit is 18 inches. In the Roanoke River up to the first impoundment, from July 1 through March 31 and June 1 through June 30 the daily creel limit for striped bass is one fish and the minimum length limit is 18 inches; from April 1 to May 31 the daily creel limit is three fish, no fish between the lengths of 22 inches and 27 inches may be retained, and the minimum length limit is 16 inches, except no fish may be retained in Roanoke River and its tributaries including Cashie, Middle and Eastmost rivers from May 1 to December 31, 1991.
- (7) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.
- (8) The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is 14 inches, with no exception in Lake Luke Marion in Moore County, in Reedy Creek Park lakes in Mecklenburg County, and in Currituck Sound and tributaries north of Wright Memorial Bridge; in North River and tributaries in Currituck and Camden Counties north of a line between Camden Point and the end of SR 1124. In and west of Madison, Buncombe, Henderson and Polk Counties the minimum size limit is 12 inches. In B. Everett Jordan Reservoir a minimum size limit of 16 inches, with no exception, applies to largemouth bass. In Falls of Neuse Reservoir, east of SR 1004, Sutton Lake and Tuckertown Lake no black bass between the lengths of 12 inches and 16 inches may be retained, and the minimum size limit for black bass is 16 inches, except that the daily creel may contain two black bass of less than 12 inches in length. In W. Kerr Scott Reservoir there is no minimum size limit for spotted bass.
- (9) A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.
- (10) The creel limit for black bass and walleye taken from Calderwood Reservoir is 10.
- (11) The minimum size limit for all black bass, with no exception, is 18 inches in the following trophy bass lakes:
 - (A) Cane Creek Lake in Union County; and
 - (B) Lake Thom-A-Lex in Davidson County.
- (12) In all impounded inland waters and their tributaries, except those waters described in Exceptions (1), the daily creel limit of striped bass and their hybrids may include not more than two fish of smaller size than the minimum size limit.
- (13) In Cane Creek Reservoir (Orange County) the season for taking largemouth bass is closed.
- (14) In Lake Tillery, Falls Lake, Badin Lake, and Tuckertown Lake a daily creel limit of 20 fish and a minimum size limit of 8 inches apply to crappie.
- (15) In Slick Rock Creek the minimum size is 7 inches for brook trout and 10 inches for brown and rainbow trout.
- (16) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits shall be the same as those established by duly adopted rules of ~~is closed when adjacent joint or coastal fishing waters are closed to hook and line fishing for striped bass by the Marine Fisheries Commission.~~

Statutory Authority G.S. 113-134; 113-292; 113-304; 113-305.

VOTING RIGHTS ACT FINAL DECISION LETTER

[G.S. 120-30.911, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

U.S. Department of Justice
Civil Rights Division

JRD:SSC:NG:lrj
DJ 166-012-3
91-1636

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

July 3, 1991

Kenneth R. Hoyle, Esq.
Lee County Attorney
P. O. Box 1968
Sanford, North Carolina 27331-1968

Dear Mr. Hoyle:

This refers to the relocation of the Board of Elections office in Lee County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on May 29, 1991.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

ORDERS OF THE TAX REVIEW BOARD

[This Section contains ORDERS of the TAX REVIEW BOARD issued under G.S. 105-241.2.]

STATE OF NORTH CAROLINA

BEFORE THE TAX REVIEW BOARD

COUNTY OF WAKE

In the matter of:)
The Proposed Assessments of)
Additional Withholding Tax for)
the Quarterly Periods Ending)
31 March 1988, 30 June 1988, and)
30 September 1988 by the Secretary)
of Revenue against 21st Century)
Builders, a partnership.)

ADMINISTRATIVE
DECISION NUMBER: 265

THIS MATTER was heard before the undersigned duly appointed and acting members of the Tax Review Board at its regular meeting in the City of Raleigh on 18 December 1991, upon Petition of 21ST CENTURY BUILDERS, a partnership, through its principal partner, LARRY W. ROARK, for review of a Final Decision of the Deputy Secretary of Revenue sustaining proposed assessments of additional withholding tax for the quarterly periods ending 31 March 1988, 30 June 1988, and 30 September 1988;

AND IT APPEARING TO THE BOARD that matters were raised by the Petitioner at the hearing before the Board regarding: (1) the nature of the Petitioner's business arrangements with persons deemed by the Department of Revenue to be employees of the Petitioner and (2) the particular nature of the work performed by certain persons deemed by the Department of Revenue to be employees of the Petitioner as the trade of such persons bears on the question of whether they were employees of the Petitioner; that such evidence was not presented by the Petitioner at the hearing before the Deputy Secretary of Revenue; that such evidence is material to the issues raised in the Petitioner's Petition, is not cumulative, and could not reasonably have been presented at the hearing before the Deputy Secretary of Revenue;

IT IS THEREFORE ORDERED that the Petitioner's case is remanded to the Deputy Secretary of Revenue, where the Petitioner shall have the opportunity to present additional evidence to be taken and ruled upon by the Deputy Secretary.

Entered in the City of Raleigh this 30th day of January, 1992.

TAX REVIEW BOARD

Harlan E. Boyles, Chairman
State Treasurer

William W. Redman, Jr.
Chairman, Utilities Commission

Jeff D. Batts

PROPOSED RULES

TITLE 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N. C. Board of Agriculture intends to adopt rule(s) cited as 2 NCAC 48A .0239, .0240, .0241; 52E .0103 and amend rule(s) cited as 2 NCAC 43L .0202; 48A .0601, .0608, .0611; 52B .0204, .0207, .0209, .0210, and .0212.

The proposed effective date of this action is May 1, 1992.

The public hearing will be conducted at 10:00 a.m. on March 19, 1992 at the Gov. James B. Hunt, Jr. Horse Complex (Restaurant), 4601 Trinity Rd., Raleigh, NC 27607.

Reason for Proposed Action:

Rule 2 NCAC 43L .0202 - Increases gate fees for Charlotte Farmers Market.

Rules 2 NCAC 48A .0239; .0240; .0241 - Establishes procedures for obtaining permit to sell bees and adopts forms.

Rules 2 NCAC 48A .0601; .0608; .0611 - Changes boll weevil eradication program rules by eliminating provisions for delayed payment of fees, by changing method of assessing penalties and interest for late payment or under-reporting of acreage.

Rules 2 NCAC 52B .0204; .0207; .0209; .0210; .0212 - Changes requirements for importation of cattle, swine, sheep, birds and wild animals.

Rule 2 NCAC 52E .0103 - Establishes requirements for sale of cattle which have been sold through a livestock market within the previous 21 days.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to David S. McLeod, Secretary of the North Carolina Board of Agriculture, P.O. Box 27647, Raleigh, NC 27611.

CHAPTER 43 - MARKETS

SUBCHAPTER 43L - MARKETS

SECTION .0200 - FEES: CHARLOTTE FARMERS MARKET

.0202 GATE FEES

The following gate fees shall be paid upon entering the market:

	Day	Week
(1) Retail Shed A		
(a) March through ~~October~~ November	~~\$5.00~~ \$6.00	~~\$20.00~~ \$25.00
(b) ~~November~~ December through February	~~4.00~~ 5.00	
(2) Retail ~~Buildings~~ Building B and C		
(a) March through September	~~6.00~~ 7.00	~~25.00~~ 30.00
(b) October through February	~~6.00~~ 7.00	20.00
(c) May through August - Saturdays only	10.00	
(d) <u>North Carolina farmers shall not be subject to the charges set forth in Subparagraph (2)(c) of this Rule.</u>		
(3) Retail Building C	5.00	
(4) ~~(3)~~ Eighteen Wheelers	8.00	
(5) ~~(4)~~ Deliveries	4.00	

Statutory Authority G.S. 106-22; 106-530.

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48A - PLANT PROTECTION

SECTION .0200 - HONEY AND BEE INDUSTRY

.0239 PERMIT TO SELL BEES

(a) The Plant Industry Division of the North Carolina Department of Agriculture is responsible for the issuing of permits to individuals, corporations, or firms intending to sell honeybees in North Carolina.

(b) Permitting Procedure:

(1) Individuals, corporations, or firms desiring to sell bees in North Carolina shall apply

PROPOSED RULES

for a permit. The permitting period will be from January 1 to December 31 of each year. Permit applications must be on a form provided by the Plant Industry Division. Permit forms are available from the following:

(A) North Carolina Department of Agriculture
Plant Industry Division
P.O. Box 27647
Raleigh, NC 27611

(B) Apiculturist, Entomology Department
N. C. State University
1114 Grinnells
Box 7626
Raleigh, NC 27695

(C) All agricultural extension offices;

- (2) A permitting fee of twenty-five dollars (\$25.00) must be paid on an annual basis for each separate permit;
- (3) Individuals, corporations, or firms may obtain a permit to sell bees at any time of year;
- (4) The permit will expire on December 31 of each year and must be renewed each year;
- (5) All provisions of the N. C. Bee and Honey Act and the rules adopted thereunder must be met as a prerequisite to obtaining a permit to sell bees, including existing quarantines;
- (6) A permit to sell bees in North Carolina can be denied or revoked in order to prevent the introduction or spread of bees or colonies with contagious or infectious diseases, disorders, or conditions deemed harmful to the North Carolina beekeeping industry;
- (7) A permit is non-transferable; all bees sold by the individual, corporation, or firm listed on the permit must be owned by and in the legal possession of said party.

Statutory Authority G.S. 106-638.

.0240 FORM BS-11

Form BS-11 is an application form for an individual, corporation, or firm wishing to sell bees or beehives in North Carolina. The application form requires the following:

- (1) Name, address, and location of applicant;
- (2) Information pertinent to the type and number of bees to be sold in North Carolina during the permitting period;
- (3) The application must be accompanied by a non-refundable fee of twenty-five dollars (\$25.00);

- (4) The permit will expire on December 31 of each year and must be renewed each year by filling out a new application form.

After satisfactorily complying with the information on the application, the Commissioner will issue a permit, Form BS-12.

Statutory Authority G.S. 106-638.

.0241 FORM BS-12

Form BS-12 is a permit for an individual, corporation, or firm wishing to sell bees or beehives in North Carolina. Form BS-11 must first be approved before the issuance of this permit. The permit lists the following:

- (1) Name, address, and location of approved applicant;
- (2) The permit will expire on December 31 of each year and must be renewed each year by filling out a new application form, BS-11.

Statutory Authority G.S. 106-638.

SECTION .0600 - BOLL WEEVIL

.0601 DEFINITIONS

For the purposes of this Section, in addition to definitions contained in G.S. 106-65.69, the following shall apply:

- (1) Compliance Agreement. A written agreement between a person engaged in growing, dealing in or moving regulated articles and the North Carolina Department of Agriculture, Plant Industry Division, wherein the former agrees to comply with conditions specified in the agreement to prevent the dissemination of the boll weevil;
- (2) Exemptions. Provisions contained in these Regulations which provide for modifications in conditions of movement of regulated articles from regulated areas under specified conditions;
- (3) Elimination Zone. That portion of this state where eradication of the boll weevil is undertaken as an objective;
- (4) Inspector. Any authorized employee of the North Carolina Department of Agriculture, Plant Industry Division, or any other person authorized by the Commissioner of Agriculture to enforce the provisions of this Section;
- (5) Regulated Area. Any state other than North Carolina or any portion of such state that is infested with the boll weevil;
- (6) Noninfested Area. That portion of this state not included in an elimination zone;
- (7) Seed Cotton. Cotton as it comes from the field prior to ginning;

- (8) Gin Trash. All of the material produced during the cleaning and ginning of seed cotton, bollies or snapped cotton except the lint, cottonseed and gin waste;
- (9) Noncommercial Cotton. Cotton intended for purposes other than processing;
- (10) ASCS. United States Department of Agriculture, Agricultural Stabilization and Conservation Service;
- (11) Farm Operator. Person responsible for production and sale of a cotton crop on any individual farm;
- (12) Used Cotton Harvesting Equipment. Previously utilized cotton equipment used to harvest, strip, transport, or destroy cotton;
- ~~(13) Waiver. A written authorization which exempts an individual from compliance with one or more specific requirements;~~
- ~~(14) (13) Cotton Crop Residue Destruction. Mowing of cotton plant stalks left in field after harvesting of crop is completed.~~

Statutory Authority G.S. 106-65.77; 106-65.91.

.0608 REPORTING OF ACREAGE:

LOCATION OF COTTON ACREAGE

All cotton farm operators and growers of noncommercial cotton in an elimination zone shall submit a Cotton Acreage Reporting Form by July 1 of the current growing season to the county ASCS office. A report shall be filed for each year of participation in the program.

- (1) Noncommercial cotton shall not be planted in an elimination zone except under the conditions of a compliance agreement. Growers of noncommercial cotton in an elimination zone may apply for a waiver to grow cotton in an elimination zone. Applications, in writing, shall be made to the Plant Pest Administrator stating the conditions for requesting such waiver. The decision whether or not to waive all or part of these requirements shall be based on the following:
 - (a) location of growing area;
 - (b) size of growing area;
 - (c) pest conditions in the growing area;
 - (d) accessibility of growing area;
 - (e) any stipulations set forth in a compliance agreement between the individual and the Department of Agriculture that are necessary for the effectuation of the program.
- (2) Written application for waivers shall be made to the Plant Pest Administrator for review.

Statutory Authority G.S. 106-65.77; 106-65.91.

.0611 PROGRAM PARTICIPATION AND PAYMENT OF FEES

~~(a) All cotton farm operators in the state are hereby required to participate in the eradication program. Participation shall include timely reporting of acreage and field locations, compliance with regulations, and payment of fees. Farm operators within the elimination zone shall be notified through the extension offices or newspapers of their program costs on a per acre basis on or before March 15. The following procedures are required for participation in the program:~~

- ~~(1) Filling out~~ Growers are to report all planted cotton by completing a Cotton Acreage Reporting Form and paying a per acre fee at the ASCS office by July 1 of the current growing season. for which participation is desired. At this time the farm operator shall pay a nonrefundable fee in an amount sufficient to cover estimated program costs as determined by the Commissioner, but not to exceed nine dollars (\$9.00) per acre. Those farm operators not reporting their acreage by July 1 will not be considered as program participants. All acreage reported by such nonparticipants after July 1 will be considered in excess and subject to penalty.
- ~~(2) All fees shall be paid by the farm operator. Fees shall be made payable to NCDA and collected by ASCS. The fee is nonrefundable and is to pay for the program's estimated costs as determined by the Commissioner, but will not exceed nine dollars (\$9.00) per acre.~~
- ~~(3) Growers not reporting planted cotton to ASCS by July 1 of the current growing season will be assessed a three dollar (\$3.00) per acre penalty.~~
- ~~(4) Growers under-reporting by more than ten percent of the actual planted acreage, as determined by ASCS, will be assessed a penalty of three dollars (\$3.00) per acre on all acreage in excess of the reported acreage.~~
- ~~(5) All acreage for which fees have not been paid on or before July 15 of the current growing season will be assessed a three dollar (\$3.00) per acre penalty.~~
- ~~(6) Interest at 15 percent per annum will be charged on all unpaid fees and penalties from August 1 to date of payment.~~
- ~~(7) Fees and penalties shall be made payable to the North Carolina Department of Agriculture.~~
- ~~(8) Extenuating circumstances, as determined by the Commissioner, may warrant the partial or total refund of penalties. A request~~

for the refund of penalties, including a complete explanation of extenuating circumstances, must be provided in writing to the Plant Pest Administrator within 30 days of such payment.

(b) Farm operators in the elimination zone whose ASCS measured acreage exceeds the grower reported acreage by more than ten percent, shall be assessed a penalty fee of three dollars (\$3.00) per acre on that acreage in excess of the reported acreage.

(c) A farm operator may apply for a waiver requesting delayed payment under conditions of financial hardship. Any farm operator applying for a waiver shall make application in writing to the Plant Pest Administrator. This request must be accompanied by a financial statement from a bank or lending agency supporting such request. All farm operators granted waiver requests for financial hardship will be charged interest payable at a rate equal to 15 percent per annum. The decision whether or not to waive all or part of these requirements shall be made by the Plant Pest Administrator and notification given to the farm operator within two weeks after receipt of such application.

(d) Failure to pay all fees or file a completed waiver request for delayed payment on or before July 15 of the current growing season will result in a penalty fee of five dollars (\$5.00) per acre. If a waiver is granted, payment shall be due at the time the cotton is sold, or by November 15, whichever is sooner.

Statutory Authority G.S. 106-65.74; 106-65.77; 106-65.88; 106-65.91.

CHAPTER 52 - VETERINARY DIVISION

SUBCHAPTER 52B - ANIMAL DISEASE

SECTION .0200 - ADMISSION OF LIVESTOCK TO NORTH CAROLINA

.0204 IMPORTATION REQUIREMENTS: BRUCELLOSIS

(a) All cattle imported into North Carolina, regardless of the class of state, are subject to the provisions of this Rule, as follows:

- (1) all cattle shall be identified by ear tag, tattoo, or other permanent means approved by the State Veterinarian;
- (2) cattle originating from any certified Brucellosis-free State or herd may enter North Carolina provided the following is recorded on the official health certificate:
 - (A) individual identification of each animal,
 - (B) herd certification number, and
 - (C) date of last herd test;

- (3) no test is required on steers and spayed females;
- (4) no cattle will be accepted (other than those consigned to immediate slaughter) which have been adult vaccinated against brucellosis or originate from infected, exposed or quarantined herds;
- (5) required retests will be performed by representatives of State Veterinarian at no expense to the owner, or the owner may have the tests conducted by an accredited veterinarian at his expense; and
- (6) all cattle shall be negative in all dilutions if tube or plate agglutination test is used, or negative to official card test.

(b) In addition to the requirements of (a) of this Rule, cattle imported from brucellosis-free and class-A states shall comply with the following:

- (1) all females and bulls eight months of age and older shall be tested negative within thirty days prior to entry into North Carolina, except:
 - (A) dairy heifers under twenty months of age, and heifers of the beef breeds under twenty-four months of age that are officially vaccinated against brucellosis; and
 - (B) cattle originating from any certified, brucellosis-free herd, provided the following is recorded on the official health certificate:
 - (i) individual identification of each animal;
 - (ii) herd certification number;
 - (iii) date of last herd test; and
- (2) cattle from ~~Free states~~ and class A states which originate from the farm of origin and move directly to an approved stockyard or farm in North Carolina in compliance with this part are not required to be tested within 45 to 120 days after entry. However, the State Veterinarian strongly recommends a retest and retests may be performed by a representative of the State Veterinarian at no expense to the owner. Eligible cattle which have been commingled in a stockyard prior to importation must in addition to the requirements of this part pass a negative retest within 45 to 120 days after arrival in this state.

(c) In addition to the requirements of (a) of this Rule, cattle imported from class B states shall comply with the following:

- (1) a permit issued to a North Carolina resident by the State Veterinarian of North Carolina prior to entry is required;

- (2) all females and bulls eight months of age or older must be tested negative within 30 days prior to entry into North Carolina except:
 - (A) dairy heifers under twenty months of age and heifers of the beef breeds under twenty-four months of age officially vaccinated against brucellosis;
 - (B) cattle originating from any certified brucellosis-free herd provided that the following is recorded on the official health certificate:
 - (i) individual identification of each animal;
 - (ii) herd certification number; and
 - (iii) date of last herd test;
- (3) all test eligible cattle shall be quarantined upon arrival and must pass a negative re-test within 45 to 120 days after arrival.
- (d) In addition to the requirements of (a) of this Rule, cattle imported from a class C state shall comply with the following:
 - (1) a permit issued to the North Carolina resident by the State Veterinarian in North Carolina prior to entry is required;
 - (2) all females and bulls eight months of age and older must have two negative tests at least 60 days apart, with the second test being conducted within 30 days of entry into North Carolina, except:
 - (A) dairy heifers under twenty months of age officially vaccinated against brucellosis;
 - (B) heifers of the beef breeds less than twenty-four months of age and officially vaccinated against brucellosis;
 - (C) cattle originating from any certified brucellosis-free herd provided the following is recorded on the official health certificate:
 - (i) individual identification of each animal;
 - (ii) herd certification number; and
 - (iii) date of last herd test;
 - (D) test eligible cattle may enter North Carolina on a 30 day negative test provided that the herd of origin has had a complete negative test within the previous 12 months;
 - (E) test eligible cattle may enter North Carolina with one negative test for consignment to a specifically state, federally approved stockyard. A permit from the State Veterinarian or his authorized representative is required prior to removal of cattle from the stockyard under this provision; and

- (3) all test eligible cattle shall be quarantined upon arrival and shall pass a negative re-test within 45 to 120 days after arrival and all female cattle which are from a "C" state shall remain under quarantine until tested negative 20 to 45 days post calving or until slaughtered.
- (4) feeder heifers must also be spayed and "spayed branded" or be "F" branded. Feeder heifers are subject to item (3) of this Paragraph. Branding must be with a hot brand, the letter F on the right or left tail head area. This F brand size should be 3" x 3". A properly applied and placed F brand will meet the individual identification requirement as specified in (a)(1) of this Rule.

Statutory Authority G.S. 106-22; 106-307.5; 106-396.

.0207 IMPORTATION REQUIREMENTS: SWINE

- (a) All swine imported into the state, except by special permit or for immediate slaughter, shall be accompanied by an official health certificate issued by a state, federal, or accredited veterinarian stating that they are free from any signs of an infectious or communicable disease and are not known to have been exposed to same. The health certificate shall contain the ear tag number of each animal or other identification acceptable to the State Veterinarian. Swine imported for feeding or breeding purposes shall be moved in clean and disinfected trucks or other conveyances.
- (b) Breeding swine shall originate from a "Validated Brucellosis-Free" herd or a "Validated Brucellosis-Free" State and originate from a "Qualified Pseudorabies-Negative" herd or Pseudorabies Stage V (Free) State as defined in Title 9, Parts 78.1 and 85 of the Code of Federal Regulations. ~~A permit issued by the State Veterinarian of North Carolina is required for all breeding swine entering the state. The permit number must be shown on the interstate health certificate accompanying each shipment.~~
- (c) All feeder swine imported into the state shall be accompanied by an official health certificate issued by a state, federal or accredited veterinarian stating that:
 - (1) No pseudorabies vaccine has been used in the herd of origin, unless the herd is a pseudorabies Controlled Vaccinated herd as defined in Title 9, Part 85.1 of the Code of Federal Regulations, or a pseudorabies monitored vaccinated herd; and

(2) The swine were tested and found negative for pseudorabies within 30 days prior to importation; or

(3) The swine originated from a pseudorabies-free area as determined by the State Veterinarian; or

(4) The swine originated from a Qualified Pseudorabies Negative Herd as defined in Title 9, Part 85 of the Code of Federal Regulations; or

(5) The swine originated from a monitored feeder pig herd. For the purposes of this Rule, in order to qualify as a monitored feeder pig herd, testing must have been performed in accordance with the following standards:

(A) In herds of ten or fewer breeding swine, all breeding swine must test negative within 12 months prior to importation.

(B) In herds of 11 to 35 breeding swine, ten randomly selected breeding animals, (to include gilts, sows and boars) must test negative within 12 months prior to importation.

(C) In herds of more than 35 breeding swine, either 30 or 30 percent of the total herd, whichever is less, randomly selected breeding gilts, sows and boars must test negative within 12 months prior to importation.

(D) All breeding gilts, sows and boars in a herd shall be subject to random selection for testing.

(E) Testing must be done by use of an official pseudorabies test, as defined in Title 9, Part 85 of the Code of Federal Regulations.

(d) Healthy swine for feeding purposes may move directly from a farm of origin in a contiguous state on which they have been located for not less than 30 days to a livestock market or stockyard in North Carolina that has been state-federal approved for handling feeder swine, without the health certificate required herein, provided such swine are accompanied by proof of the pseudorabies status of the herd of origin acceptable to the State Veterinarian. Such swine shall be inspected by a state or federal inspector or approved accredited veterinarian prior to sale at the market.

(e) Healthy swine may be shipped into the state for immediate slaughter without a health certificate provided they go directly to a slaughtering establishment approved by the State Veterinarian, or to a state-federal approved livestock market or stockyard for sale to an approved slaughtering establishment for immediate slaughter only.

(f) As used in Paragraph (c)(1) ~~hereof, of this Rule~~, a "monitored vaccinated herd" means a herd in which all breeding swine over six months of age have been officially vaccinated by an accredited veterinarian with a vaccine the titers of which can be distinguished from pseudorabies field infections and the herd has passed an official random sample test or complete herd test during the preceding 12 months. (From proposed Pseudorabies Eradication Uniform Methods and Rules of the United States Department of Agriculture.)

Note: Violation of this Rule is a misdemeanor under G.S. 106-307.6, which provides for a five hundred dollar (\$500.00) fine, six months' imprisonment, or both.

Statutory Authority G.S. 106-307.5; 106-316.1; 106-317; 106-318.

.0209 IMPORTATION REQUIREMENTS: SHEEP

(a) The health certificate covering the importation of sheep shall include a report of inspection by a veterinarian approved by the chief livestock sanitary official of the state of origin indicating the sheep are not under quarantine and are free from signs of any infectious or communicable disease. The health certificate shall contain a statement that the flock of origin has not had scrapie diagnosed within the past 42 months.

(b) Sheep which have not been handled in stockyards, stock pens or on premises in public use for livestock may be imported without dipping, from a state or area designated as scabies-free by the United States Department of Agriculture.

(c) Unless waived by the State Veterinarian, sheep for purposes other than immediate slaughter that have not been dipped in accordance with the regulations of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture may not be imported into the state. While in transit they shall be accompanied by a certificate of such dipping. The requirements for dipping will be waived when it can be determined that the sheep will be isolated from other animals at the North Carolina destination until dipped.

(d) Sheep consigned for the purpose of immediate slaughter to a recognized stockyard, or to a slaughtering establishment with state or federal inspection may be imported without a health certificate. A waybill or certificate marked for immediate slaughter must accompany such shipments.

Statutory Authority G.S. 106-307.5.

**.0210 IMPORTATION REQUIREMENTS:
AVIAN SPECIES**

Members of the avian species, other than chickens, turkeys, or other domestic poultry, entering into North Carolina shall be accompanied by a permit from the State Veterinarian of North Carolina or his authorized representative and be accompanied by an official interstate health certificate issued within five days of shipment.

Note: For chickens, turkeys or other domestic poultry, see 2 NCAC 52B .0600.

Statutory Authority G.S. 106-539; 106-540; 106-543.

**.0212 IMPORTATION REQUIREMENTS:
WILD ANIMALS**

(a) A person shall obtain a permit from the State Veterinarian before importing any of the following animals into this State:

- (1) Skunk;
- (2) Fox;
- (3) Raccoon;
- (4) Ringtail;
- (5) Bobcat;
- (6) Coyote;
- (7) Marten.

(b) Permits for the importation into this State of any of the animals listed in (a) of this Rule shall be issued only if the animal(s) will be used in a research institute, or for public display or organized entertainment as in zoos or circuses.

(c) Llamas, all cervidae, bison and all other bovidae other than domestic cattle may be imported into the State if accompanied by an official health certificate issued by an accredited veterinarian which states that:

- (1) all animals six months of age or older have tested negative for brucellosis within 30 days prior to importation; and
- (2) all animals six months of age or older have tested negative for tuberculosis within 60 days prior to importation pursuant to the guidelines of the United States Department of Agriculture Veterinary Services Notice dated December 31, 1990, which states "the cervical test for cervidae is the intradermic injection of 0.1 ml. of U. S. Department of Agriculture (USDA) contract PPD Bovis tuberculin in the midcervical region with reading by observation and palpation at 72 hours, plus or minus 6 hours"; and
- (3) the herd of origin has had no brucellosis or tuberculosis diagnosed within the past 12 months.

(d) ~~(e)~~ Other wild and semi-wild animals, ~~(except the American buffalo or bison which for the purpose of this Section shall be considered as beef cattle),~~ under domestication or in custody may be imported into this state, provided that a report of the number of animals by species is made to the State Veterinarian within 96 hours after entry into the state, and that an immediate opportunity for examination to determine the health status of such animals is afforded the State Veterinarian or his authorized representative.

Statutory Authority G.S. 106-317; 106-400.

**SUBCHAPTER 52E - MARKETING OF
LIVESTOCK**

**SECTION .0100 - DEFINITIONS AND GENERAL
RULES**

.0103 RESOLD CATTLE

(a) When cattle for feeding or breeding purposes are delivered to a public livestock market, the seller shall designate as "resold" or "second-handed" any cattle which have been sold through any livestock market within the previous 21 days. The seller shall make this designation to the livestock market operator, his agent, or the North Carolina Department of Agriculture livestock inspector in charge.

(b) All resold or second-handed cattle shall be penned together and separate from farm fresh cattle. The market operator shall announce to the buyers that these are resold or second-handed cattle when they are offered for sale.

Note: Violation of this Rule is a misdemeanor under G.S. 106-417, and violators may be fined or imprisoned, or both, in the discretion of the court. In addition, a public livestock market license may be revoked for violations of this Rule, pursuant to G.S. 106-407.2.

Statutory Authority G.S. 106-416.

**TITLE 4 - DEPARTMENT OF ECONOMIC
AND COMMUNITY DEVELOPMENT**

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Alcoholic Beverage Control Commission intends to amend rule(s) cited as 4 NCAC 2R .0204 - .0205, .0404 - .0405, .0701 - .0702, .0802, .0820, .0901 - .0902, .0906, .1008, .1203, .1205, .1401 - .1402, .1407, .1701, .1703, .1708, .1801, .1901, .1903; 2S .0101 - .0103, .0105 - .0108, .0202, .0205, .0218, .0220, .0227, .0229, .0232, .0402 - .0403, .0502 - .0503, .0510, .0512 - .0514, .0516, .0518 - .0520, .0703 -

.0707, .0801, .0902 - .0903, .1001, .1004 - .1012, .1014, .1020, .1101, .1103; 2T .0101, .0201 - .0203, .0401, .0409, .0501 - .0502, .0602, .0604, .0607, .0702, .0704, .0707 - .0709, .0901; repeal rule(s) cited as 4 NCAC 2R .0301 - .0302, .0801, .0805 - .0808, .0810 - .0812, .0814 - .0819, .1704, .1707; 2S .0221, .0406, .0515, .0601, .0603, .0605 - .0611, .0802 - .0804; 2T .0605, .0608, .0710; and adopt rule(s) cited as 4 NCAC 2R .0303 - .0304, .0821 - .0823, .0909, .1009, .1503, .1710, .1803 - .1805; 2S .0233 - .0236, .0407, .0523 - .0529, .0612, .0708; 2T .0206, .0610, .0711 - .0717.

The proposed effective date of this action is July 1, 1992.

The public hearing will be conducted at 10:00 a.m. on April 9, 1992 at the ABC Commission Offices, Hearing Room, 3322 Garner Road, Raleigh, NC 27610.

Reason for Proposed Action: This is a general rewrite of existing rules. Repeals are to delete rules that are not necessary or that repeat statutes. Amendments and adoptions are to codify what are accepted trade practices by alcoholic beverage retailers and industry; to codify Commission interpretations of current rules and statutes; to clarify existing rules; to implement 1991 enactments by the General Assembly; and to make grammatical, technical and conforming changes.

Comment Procedures: Written comments concerning proposed repeals, adoptions or amendments should be submitted no later than April 9, 1992 to Ann Fulton, Commission Counsel, P.O. Box 26687, Raleigh, NC 27611-6687. Oral comments may be presented at the hearing.

CHAPTER 2 - ALCOHOLIC BEVERAGE CONTROL COMMISSION

SUBCHAPTER 2R - ORGANIZATIONAL RULES: POLICIES AND PROCEDURES

SECTION .0200 - STRUCTURE

.0204 ADMINISTRATIVE FUNCTIONS

The principal administrative officer shall be the administrator who executes rules, policies and procedures governing the sale of alcoholic beverages and coordinates the functions of the Commission with local boards and industry.

Statutory Authority G.S. 18B-200(d); 18B-203; 18B-207.

.0205 LEGAL FUNCTIONS

(a) The hearings division provides administrative hearings for persons charged with violations of ABC laws and for applicants who request such a hearing after disapproval of an application and holds other hearings as directed by the chairman or the Commission. Hearings are conducted by a hearing officer designated by the chairman or the Commission. The hearings division maintains case records and files that are available for inspection by the parties, issues subpoenas, collects money payable to the Commission from fines and offers in compromise and remits this money to the State Treasurer for the general fund, and distributes a calendar of cases heard and disposed of by the Commission. Records, files and calendars of cases may be inspected at or obtained from the Commission offices, 3322 Garner Road, Post Office Box 26687, Raleigh, North Carolina 27611-6687.

(b) **Hearing Officer.** The hearing officer conducts administrative hearings relative to alleged violations and appeals by applicants who have been denied permits and recommends a disposition of each case. Final decisions in hearing cases are made by the Commission.

The Legal Division processes cases involving permittees charged with violations of the ABC laws, and represents the Commission in contested cases before the Office of Administrative Hearings. Legal staff may also serve as hearing officers in cases filed under Article 12 of Chapter 18B.

Statutory Authority G.S. 18B-104; 18B-200(d).

SECTION .0300 - PUBLICATIONS: RECORDS: COPIES

.0301 DISTRIBUTION OF RULES

(a) **Distribution to Permittees.** In addition to publications required by law, copies of policies, rules, or amendments that affect persons engaged in the alcoholic beverage industry shall be distributed to the clerks of court in each of the 100 counties and to employees of the Commission charged with the responsibility of administering the ABC law.

Copies of any policies, rules and amendments shall be available to any interested party by sending the appropriate fees to:

N.C. Alcoholic Beverage Control Commission
3322 Garner Road
P.O. Box 26687
Raleigh, North Carolina 27611-6687

The following items are available:

- (1) Chapter 18B of the North Carolina General Statutes;

- (2) Title 4, Chapter 2 of the North Carolina Administrative Code (North Carolina Alcoholic Beverage Control Commission);

- (3) Amendments to rules previously adopted by the Commission.

(b) Distribution to Employees. A copy of all policies and rules pertaining to the duties and conduct of employees of the Commission shall be distributed to those employees.

(c) Distribution to Local Boards. A copy of all policies and rules affecting local boards shall be distributed to the chairman and supervisor of each local board.

(d) Distribution to Alcohol Law Enforcement Division. A copy of all policies and rules pertaining to duties engaged in by the ALE Division shall be distributed to each employee of the division.

Statutory Authority G.S. 12-3.1(c); 18B-207; 150B-62.

.0302 PUBLIC INSPECTION OF RULES AND RECORDS

(a) All rules and other written statements of policy or interpretations formulated, adopted or used by the Commission in the discharge of its functions shall be available for public inspection at the Commission's office in Raleigh, North Carolina, between 8:00 a.m. and 5:00 p.m., Monday through Friday. The Commission will also make available for public inspection all applications for ABC permits; testimony received into evidence at rule-making hearings and hearings of contested cases; and any testimony or evidence upon which is based a final decision determining the legal rights, duties or privileges of specific parties, or determining private rights or procedures available to the public.

(b) The following shall not be open to public inspection:

- (1) opinion or conclusions of the investigating officer not based on competent evidence obtained by the officer;
- (2) identity of confidential sources, informers or undercover officers;
- (3) all files, reports or evidence in connection with an ongoing investigation.

Statutory Authority G.S. 18B-207; 150B-11.

.0303 DISTRIBUTION, INSPECTION AND COPIES OF ABC LAWS

(a) Distribution of Rules and Statutes. A copy of the Commission's Rules and Chapter 18B of the General Statutes will be distributed at no charge to each local ABC board, each ALE agent, ABC officer and local law enforcement

officer employed by a contracting agency pursuant to G.S. 18B-501(f), and to each employee of the Commission.

(b) Purchasing Copies of the ABC Laws. Copies of the ABC laws are available to any interested person who contacts the Commission at the following address or phone number:

North Carolina Alcoholic Beverage Control
Commission
3322 Garner Road
P.O. Box 26687
Raleigh, NC 27611-6687
(919) 779-0700

The following items are available and should be purchased together for complete access to the ABC laws of this State:

- (1) Chapter 18B of the North Carolina General Statutes, at a cost of five dollars (\$5.00).
- (2) Title 4, Chapter 2 of the North Carolina Administrative Code, containing all the rules of the Commission, at a cost of seven dollars and fifty cents (\$7.50).

Payment by check or cash must be made prior to receiving copies of either publication.

(c) Copies of Individual Rules or Statutes. For a fee of twenty-five cents (\$.25) per page, copies of rules, amendments and general statutes are available to any person contacting the Commission at the address and phone number in Paragraph (b) of this Rule.

(d) Public Inspection of Records. Inspection of records and documents in the possession and custody of the Commission is governed by the provisions of Chapter 132 of the North Carolina General Statutes. Fees for copying public records shall be twenty-five cents (\$.25) per page.

Statutory Authority G.S. 12-3.1; 18B-207; 132-1 through 132-1.3; 132-6.

.0304 FEE FOR PERMITTEE LISTS; COMPUTER SERVICES

(a) Lists. For a fee of seven cents (\$.07) per name, the Commission will provide to any interested person a list of permittees by county or by types of permits issued. Orders for a permittee list should be placed at least 72 hours in advance. The purchaser of the list will be notified of the total cost, including postage, and will be required to remit the total cost plus postage, by check or money order, before receiving a copy of the list.

(b) Other Data Processing Services. The Commission will attempt to provide data processing services related to the Commission's powers and duties upon request. Fees for such services will be determined based on the actual

PROPOSED RULES

cost to the Commission and shall be required to be paid in advance.

Statutory Authority G.S. 18B-207; 150B-19(5)e.

SECTION .0400 - RULE-MAKING

.0404 NOTICE OF RULE-MAKING HEARINGS; MAILING LIST

(a) Upon a determination to hold a rule-making proceeding, either in response to a petition or otherwise, the Commission shall give at least 30 days notice to all interested parties of a public hearing on the proposed rule. the proceedings in accordance with the requirements of Chapter 150B of the General Statutes.

(b) Mailing List. Any person desiring to be placed on the mailing list for the rule-making notices may file a request in writing, furnishing his name and mailing address to the Commission. The request shall state the subject areas within the authority of the Commission for which notice is requested.

(c) ~~Publication of Notice. Public notice of the rule-making proceedings will be by publication in The North Carolina Register.~~

(c) Fee Charged. The cost to be on the mailing list for rule-making notices shall be fifteen dollars (\$15.00) per year. A notice and invoice will be mailed in February of each year to persons on the mailing list. Persons who do not renew their request to remain on the mailing list by remitting the fee by March 1 of each year will be deleted from the list.

Statutory Authority G.S. 18B-207; 150B-21.2.

.0405 RULE-MAKING HEARING

(a) Location. Unless otherwise stated in a particular rule-making notice, rule-making hearings shall be held in the administrative hearing room of the Commission's Raleigh office.

(b) Oral Presentations. Any person desiring to present oral data, views or arguments on the proposed rule shall, at least three days prior to the hearing, is encouraged to file a written notice of that desire with the chief hearing officer-Chairman. Notice of this presentation may be waived or a failure to give the notice may be excused by the chairman upon a showing of good cause. The notice of the oral presentation shall contain a brief summary of the individual's or organization's views with respect to the proposed adoption, amendment or repeal of a rule, and a statement of the length of time the speaker intends to speak.

(c) ~~Written submissions. Written materials containing data, comments or arguments con-~~

~~cerning proposed rules that are filed within the time allowed shall be considered by the Commission before the final adoption, amendment or repeal of a rule.~~

(c) ~~(d)~~ The Chairman shall preside at the rule-making hearing, and shall ~~insure~~ ensure that each person participating is given a fair opportunity to present oral arguments, comments and data supporting his position.

Statutory Authority G.S. 18B-207; 150B-21.2(e).

SECTION .0700 - PERSONNEL POLICIES: COMMISSION

.0701 STANDARDS FOR COMMISSION AND EMPLOYEES

(a) Financial Interests Prohibited. No member or employee of the Commission shall have or acquire any financial interest in the business, equipment or premises operated by any person, firm or corporation engaged in the production, sale or distribution of alcoholic beverages.

(b) Relations. No member or employee of the Commission shall be related by blood, to the degree of first cousin or closer, to any person engaged or employed in the production, sale or distribution of alcoholic beverages in this State.

(c) Gifts. ~~No member or employee or Commission member of the Commission shall require gifts or alcoholic beverages accept any gift or any other thing of value from any person, firm or corporation engaged in the production, sale or distribution of alcoholic beverages that would result in a violation of any general statute or Executive Order.~~

(d) Entertainment. Except as prohibited elsewhere in these Rules reasonable entertainment of members or employees by a permittee or his representative is proper when that member or employee is entertained in an official capacity as a representative of the Commission, such as reasonable entertainment at state or national conventions or similar events, or for good and proper reason that will not tend to influence the member or employee in the discharge of his duties with the Commission.

Statutory Authority G.S. 18B-201; 18B-207.

.0702 DISCIPLINARY ACTION OF EMPLOYEE

All employees of the Commission shall be subject to the policies ~~set forth in the Personnel Manual of the North Carolina State Personnel established by the Office of State Personnel~~ pertaining to disciplinary action, suspension and dismissal.

In addition to the grounds for disciplinary action provided in the ~~State Personnel Manual~~

of the North Carolina State Personnel Office, by the Office of State Personnel, the following shall be additional grounds for disciplinary action:

- (1) willful disregard of the published policies of the North Carolina Alcoholic Beverage Control Commission, or
- (2) violation of any law pertaining to alcoholic beverages.

Statutory Authority G.S. 18B-201; 18B-202; 18B-207.

SECTION .0800 - ADJUDICATION: CONTESTED CASES

.0801 DEFINITIONS

As used in this Section:

- (1) "Aggrieved party" means any person whose application for a permit has been rejected, or any person who currently holds a permit that is subject to suspension, revocation or a monetary penalty.
- (2) "Party" means each person or agency named or admitted as a party or properly seeking as of right to be admitted as a party, and includes the Commission where appropriate.
- (3) "Hearing" means the initial administrative proceedings conducted by a hearing officer.
- (4) "Final hearing" means the proceedings before the Commission reviewing the recommendation of a hearing officer as to the disposition of a contested case.

Statutory Authority G.S. 18B-207; 150B-11; 150B-23.

.0802 NOTICE OF PROPOSED COMMISSION ACTION; OFFERS IN COMPROMISE

If the chairman is of the opinion that the facts reported by a law enforcement officer warrant denial, suspension or revocation of a permit, or if sufficient written objections have been filed with the Commission to warrant denial of a permit, the Commission shall send notice of the proposed action to the applicant or permittee.

(a) Notice of Alleged Violation. If facts reported by a law enforcement officer indicate a violation of the ABC laws, the Commission shall send a Notice of Alleged Violation to the permittee, which shall contain a short and plain statement of the facts alleged, and a reference to the particular sections of the statutes or rules involved. The notice may also contain an offer to settle the case, and an indication of the procedure by which this may be accomplished.

(b) Offers in Compromise. A permittee may enter into a stipulated settlement or offer in compromise pursuant to G.S. 18B-104, subject

to ratification by the Commission. If a permittee indicates a desire for a hearing, or does not respond to the Notice of Alleged Violation, the Commission will file a petition with the Office of Administrative Hearings. Contested case procedures are governed by Chapter 150B of the General Statutes and the rules of the Office of Administrative Hearings.

Statutory Authority G.S. 18B-104; 18B-203 (a) (12); 18B-207; 150B-22; 150B-23.

.0805 SERVICE OF NOTICE

The Official Notice of Hearing shall be served personally by an alcohol law enforcement agent or by certified mail; return receipt requested. If personal service is made, the agent shall state the date and time of service of the notice. When notice is sent by certified mail, it shall be deemed service was made on the date appearing on the return receipt.

Statutory Authority G.S. 18B-207; 150B-11; 150B-23.

.0806 SUBPOENAS

(a) The attendance of witnesses or the production of evidence including books, records, correspondence and documents at an administrative hearing may be compelled by the issuance of a subpoena, upon the Commission's own motion or upon request of any party.

(b) Request for Subpoena. Request for the issuance of subpoenas shall be addressed to the Commission. The request shall include a concise but complete statement of reasons for the necessity of the witness' testimony or the production of the material. The request shall also include the following information:

- (1) name of the contested case;
- (2) name and address of party requesting the subpoena;
- (3) name and address of the person to whom the subpoena is directed and the party on whose behalf he is to testify; and
- (4) a sufficiently particular designation of the evidence requested to be produced at the hearing.

(c) Service of Subpoenas. All subpoenas issued by a hearing officer shall be served in the manner prescribed by G.S. 1A-1, Rule 45(e).

(d) Enforcement of Subpoena. If a person to whom a subpoena is directed fails to comply with its order, the hearing officer may apply to the General Court of Justice, Superior Court Division, for an order to show why the subpoenaed party should not be held in contempt of the agency.

(e) Contents of Subpoena. The subpoena shall include the following information:

- (1) name and address of the Commission;
- (2) name and address of party requesting issuance of the subpoenas;
- (3) name of the person to whom the subpoena is directed;
- (4) name and address of party on whose behalf witness is to testify;
- (5) sufficiently particular description of the materials requested.

Statutory Authority G.S. 18B-207; 150B-11; 150B-27.

.0807 CHALLENGE OF SUBPOENA: PROCEDURE

(a) Request for Revocation of Subpoena. The validity of any subpoena issued by the Commission is subject to challenge at the request of the person to whom the subpoena is directed. To challenge a subpoena, the person to whom it is directed shall file with the Commission written objections and reasons therefor and request in writing that the subpoena be revoked or modified.

(b) The person so challenging the subpoena shall, simultaneously with the filing of his objections with the Commission, serve his objection on the party requesting the subpoena.

(c) The party requesting the subpoena, within the time granted by the Commission, may file a written response to the objections. The response shall be served in the same manner as the objections.

Statutory Authority G.S. 18B-207; 150B-11; 150B-27.

.0808 CHALLENGE OF SUBPOENA: RULING

Following receipt of objections, a written request to modify or revoke a subpoena, and any response to the objections, the Commission shall rule on the challenge and issue a written decision. A copy of the decision shall be issued to all parties and made a part of the record of the contested case to which it applies.

Statutory Authority G.S. 18B-207; 150B-11; 150B-27.

.0810 PRE-HEARING CONFERENCE

(a) Purpose. The purpose of the pre-hearing conference shall be to discuss:

- (1) the possible simplification of issues;
- (2) the stipulation of facts and issues;
- (3) areas where evidence will be needed;

(4) whether depositions and subpoenas will be necessary;

(5) whether consolidation of cases or joint hearing is feasible; and

(6) any other matters which will reduce costs or save time in the disposition of the case.

(b) On Request of Party. Any party may request a pre-hearing conference by notifying the hearing officer within a reasonable time after receiving the Official Notice of Hearing.

(c) Upon Notice from Hearing Officer. The hearing officer may hold a pre-hearing conference and require attendance of all parties, upon a reasonable written notice to the parties involved.

(d) By mutual agreement of the parties, a pre-hearing conference may be held anywhere within the State of North Carolina.

(e) Any stipulation as to facts, issues, and evidence shall be admissible at the hearing and shall be binding upon all parties.

(f) The production of evidence, including books, records, correspondence and documents, at a pre-hearing conference may be compelled by issuance of a subpoena, upon the Commission's own motion or upon request of any party.

Statutory Authority G.S. 18B-207; 150B-11; 150B-33.

.0811 INTERVENTION

(a) A motion to intervene as a party in a contested case shall be granted if the petitioner files such motion to intervene as provided in G.S. 1A-1, Rule 24, and if the petitioner meets the criteria specified in Rule 24.

(b) Discretionary Intervention. In addition to intervention as provided by G.S. 1A-1, Rule 24, discretionary intervention may be allowed upon oral motion at the initial hearing, when deemed advisable by the hearing officer. Discretionary intervention will be deemed advisable when:

(1) The information petitioner desires to present is relevant and not repetitious or merely cumulative; and

(2) The petitioner's participation would not unduly burden the hearing.

(c) Timeliness. The written petition to intervene shall be deemed timely made if filed at any time prior to the termination of the final Commission hearing. Provided that such petition to intervene will not be granted if the intervention of the petitioner would cause substantial prejudice to the rights of the parties.

(d) Filing Motion; Contents. A person desiring to intervene in a contested case shall file a motion with the hearing officer, and shall include the following information in the motion:

- (1) citation of any statutory or non-statutory grounds for intervention;
- (2) statement of the claim or defense upon which intervention is sought;
- (3) petitioner's name and address;
- (4) petitioner's business or occupation;
- (5) name of the contested case in which petitioner wishes to become a party; and
- (6) concise summary of the arguments or evidence which petitioner seeks to present.

(e) **Allowing Motion to Intervene.** If the hearing officer allows a petitioner's motion to intervene, he shall send prompt notice of the petitioner's intervention to all parties.

(f) **Denying Motion to Intervene.** If the hearing officer denies the petitioner's motion to intervene, he shall send prompt notice to the petitioner and other parties, stating the reasons for his decision.

Statutory Authority G.S. 18B-207; 150B-11; 150B-23.

.0812 DISCOVERY

(a) An aggrieved party to a contested case may discover information from records of the Commission.

(b) Discoverable materials include:

- (1) investigative report of the ALE agent or local ABC officer;
- (2) findings of fact and recommendations of the hearing officer;
- (3) transcript of the hearing held by the hearing officer;
- (4) transcript of the hearing before the Commission; and
- (5) any agency records relating to material facts involved in the contested case.

(c) At the hearing of a contested case, whether before the hearing officer or the Commission, a party or his attorney may examine all written and physical evidence to be used against him.

(d) In cases of unreasonable hardship to the parties or witnesses, the use of a deposition may be allowed in the discretion of the hearing officer before whom the case is to be heard. When a deposition is allowed, it may be used in lieu of other evidence when taken in accordance with G.S. 1A-1.

(e) In addition to the discovery otherwise authorized by this Rule, in any case in which the commission receives a request for a hearing involving the malt beverage or wine franchise act [G.S. 18B-1109(b) and -1117, and G.S. 18B-1200 through -1216, respectively], discovery by the commission and all parties is governed by the Rules of Civil Procedure (G.S. 1A-1).

Statutory Authority G.S. 18B-207; 150B-11; 150B-28.

.0814 FILING AND FORM OF BRIEFS: MOTIONS; DOCUMENTS

Any document, motion, petition, request or paper to be filed with the Commission or hearing officer shall be personally delivered or sent by regular or registered mail to the North Carolina Alcoholic Beverage Control Commission, P.O. Box 26687, Raleigh, North Carolina 27611-6687; except that whenever hearings are held by a hearing officer in any place other than Raleigh, documents pertaining thereto may be filed at the hearing.

Statutory Authority G.S. 18B-207; 150B-11; 150B-28.

.0815 CONTINUANCES

(a) **Request for Continuance.** Requests for a continuance shall be made to the hearing officer at least two working days prior to the date of the hearing, stating in detail the reasons why such continuance is necessary. For good cause shown, the Commission or hearing officer may grant the request for continuance of the hearing of a contested case.

(b) **On Motion of Commission or Hearing Officer.** The Commission or the hearing officer may, at any time, order a continuance.

(c) **Untimely Requests.** Requests for continuances received less than two working days prior to the time fixed for hearing will not be granted except where there exists a bona fide emergency or where justice and fairness to all parties will be better achieved.

(d) **Place of Rescheduled Hearing.** Upon the granting of a continuance, the hearing may be rescheduled as provided in Rule .0809 of this Section.

Statutory Authority G.S. 18B-207; 150B-11; 150B-28.

.0816 DISQUALIFICATION OF HEARING OFFICER

(a) If, for any reason, the hearing officer assigned to conduct the hearing of a contested case determines that personal bias or other factors would prevent him from being able to conduct the hearing and perform all duties in an impartial manner, he shall submit a statement in writing to the chairman stating his disqualifications and the reasons therefor. The chairman shall thereupon designate a different hearing officer to hear the case.

(b) In the event any party believes that the hearing officer assigned to hear the case is personally biased or disqualified, he may object to such alleged disqualification by filing, in good faith, sworn affidavit with the chairman of the Commission. The affidavit shall state all facts and reasons supporting his objection.

(1) The affidavit shall be filed before commencement of the hearing, provided, however, that the party may make objection to the disqualification of the hearing officer at the first opportunity after he becomes aware of facts giving rise to a reasonable belief that the hearing officer may be disqualified, notwithstanding the fact that the hearing may have commenced.

(2) **Objection during Hearing.** If a party makes objection during the hearing to the disqualification of the hearing officer, the hearing officer shall note such objection in the record and proceed with the hearing.

(3) **Request for Rehearing.** After the hearing is adjourned, the party objecting to the qualification of the hearing officer may file a sworn affidavit with the chairman, stating all facts and reasons supporting his objection, and request a rehearing before a different hearing officer. The chairman shall make a determination based upon all available facts whether the officer hearing the case was in fact unable to conduct the hearing in an impartial manner.

(A) If the chairman determines there is sufficient evidence of disqualification or bias, he shall designate a different hearing officer and cause notice of rehearing to be sent to all parties in the same manner as any other notice of hearing.

(B) If the chairman determines there is insufficient evidence of bias or disqualification, he shall deny the request for a rehearing. Notice of the denial of the request shall be sent to all parties and shall state the reasons therefor. The hearing officer may proceed with his findings of fact and recommendations to the Commission.

(4) The affidavit alleging disqualification of a hearing officer and the findings of the chairman shall be made a part of the record of the case, and shall be subject to judicial review at the instance of the objecting party.

Statutory Authority G.S. 18B-207; 150B-11; 150B-32.

.0817 UNAVAILABILITY OF HEARING OFFICER

(a) If a hearing officer, for any reason, is unable to complete the hearing of a contested case, the chairman may designate another hearing officer to continue the hearing of the case.

(b) Subsequent to the designation of a successor hearing officer, the hearing shall continue from that point reached in the proceedings when the original hearing officer became unavailable, provided, however:

(1) If a witness has previously testified as to material facts and the hearing officer believes that the demeanor of the witness is an important element of the testimony, the hearing officer may order that examination of that witness be repeated.

(2) If the direct testimony of a witness has been completed before the resumption of the hearing, but cross-examination has not been completed, the hearing officer may order that the direct examination be repeated.

(3) If any party can show that continuation (from the point reached in the proceedings before the original hearing officer) will result in substantial prejudice, the hearing officer shall order a new hearing.

Statutory Authority G.S. 18B-207; 150B-11; 150B-32.

.0818 HEARING PROCEDURE

(a) **Failure to Appear.** If a party fails to appear after proper service of notice, the hearing officer, if no adjournment is granted, may proceed with the hearing.

(b) The parties and witnesses testifying at a hearing shall be put under oath.

(c) The hearing shall be recorded.

(d) Any aggrieved party or his attorney shall be permitted to introduce evidence and witnesses in his behalf, present arguments on issues of law or policy, examine all written and physical evidence to be used against him, and cross-examine all witnesses testifying against him.

(e) Objections to the notice, procedure, qualifications of the hearing officer, conduct of the hearing officer or of any party, or to the admission or exclusion of evidence, and any exceptions taken to such action shall be noted in the record by the hearing officer.

(f) All persons appearing in hearing proceedings in a representative capacity shall conform to the standards of ethical conduct required

of attorneys practicing in the courts of this State, as set forth in the Canons of Ethics of the North Carolina State Bar and the Code of Professional Responsibility.

(g) The hearing officer may cause to be removed from the hearing any person causing a disturbance therein.

Statutory Authority G.S. 18B-207; 150B-11; 150B-25.

**.0819 FINDINGS; CONCLUSIONS;
RECOMMENDATIONS OF HEARING
OFFICER**

After the hearing, the hearing officer shall review all the evidence, record his findings of fact, his conclusions of law, and prepare a recommendation for action on the application or permit, together with the official Commission record of any prior disciplinary action taken against the party by the Commission or an alcohol law enforcement agent or local ABC officer. Each party shall receive a copy of the findings, conclusions and recommendations in the case prior to the Commission meeting when final disposition will be made of the case.

Statutory Authority G.S. 18B-207; 150B-11; 150B-34.

**.0820 FINAL ADMINISTRATIVE DECISION;
HEARING**

(a) Right to be Present at Final Administrative Decision; Notice. Each party to a contested case and his attorney of record shall receive reasonable notice of the location, hour and date when the findings of fact and recommendation of the hearing officer administrative law judge will be reviewed by the Commission for a final disposition of the case. This notice shall be served as provided by Rule .0805 of this Section.

(b) Continuances. The chairman may grant continuances for just cause upon two working days oral or written notice.

(c) Service of Notice. Service of notice of final administrative action shall be in accordance with Rule .0805 of this Section by certified mail. If notice is accomplished by certified mail, the delivery date on the return receipt shall be the date of notice. If service cannot be made by certified mail, then the notice will be served personally or in accordance with G.S. 1A-1, Rule 4 (j1).

Statutory Authority G.S. 18B-207; 150B-36.

**.0821 ARTICLE 12 HEARINGS; PETITION
AND NOTICE**

(a) Initiation of Hearing. A hearing under Article 12 of Chapter 18B of the General Statutes

(Wine Distribution Agreements Act) shall be commenced by the filing of a petition with the Commission. The petition shall state the party's contentions in detail, and set forth chronologically the events surrounding the winery's termination of the agreement.

(b) Requests for Relief. In any case in which a wholesaler requests that the Commission provide relief in a dispute with a winery under Article 12, the Commission may deem that request to be in the nature of a request for a hearing, and may conduct a hearing to determine if the winery has good cause to terminate an agreement with the wholesaler, or to determine if the wholesaler has rectified the reasons given by the winery for the termination.

(c) Notice of Hearing. A Notice of Hearing shall be mailed to the parties in a dispute under Article 12 at least 15 days prior to the hearing. The notice will be served by certified mail or in accordance with G.S. 1A-1, Rule 4 (j1). In the event service is made by certified mail, the delivery date on the return receipt shall be the date of notice. The notice will contain a short and plain statement of the issues to be resolved by the Commission, the date, time, and place of the hearing, and the name of the hearing officer who will conduct the hearing, if the Commission determines that it will not preside at the initial hearing.

(d) Rules of Procedure. Hearings conducted under Article 12 of Chapter 18B of the General Statutes will be conducted in accordance with the Rules of Civil Procedure as contained in G.S. 1A-1, and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes.

Statutory Authority G.S. 1A-1, Rule 4(j1); 7A-750; 18B-203(a)(1),(2); 18B-207; 18B-1205.

.0822 ARTICLE 12 HEARINGS; EVIDENCE

The provisions of G.S. 150B-29 relating to evidence shall apply to hearings conducted under Article 12 of Chapter 18B of the General Statutes.

Statutory Authority G.S. 18B-203(a)(1),(2); 18B-207; 18B-1204; 18B-1205.

**.0823 FINAL ADMINISTRATIVE DECISION;
ORDER**

(a) Right to Submit Proposed Findings. The parties in a hearing conducted under Article 12 shall have an opportunity to file proposed findings of fact and conclusions of law within 30 days of the conclusion of the initial hearing.

(b) Recommended Decision. If a hearing conducted under Article 12 is presided over by a hearing officer, the hearing officer shall issue a recommended decision that contains proposed findings of fact and conclusions of law. The hearing officer shall serve a copy of the recommended decision upon all parties and the members of the Commission who will make the final administrative decision. Service shall be in the manner prescribed in Rule .0821(c) of this Section.

(c) Exceptions. The parties to a case heard under Article 12 shall have the right to file written exceptions to a recommended decision by the hearing officer. Exceptions shall be filed with the Commission within 30 days of receipt of the recommended decision.

(d) Hearing Conducted by Commission. In lieu of assigning a hearing officer to preside over the initial hearing, the Commission may conduct the initial hearing. After the time for the filing of proposed findings of fact and conclusions of law by the parties has expired, the Commission will issue a final administrative decision and order that determines the issues set forth in any prior pre-hearing order.

(e) Petition to Office of Administrative Hearings. In any case heard by the Commission under Article 12 of Chapter 18B of the General Statutes, if the Commission finds evidence of violations of Article 12 of Chapter 18B, or any other ABC law, it may commence proceedings in accordance with the provisions of Rule .0802 of this Section.

Statutory Authority G.S. 18B-203(a)(1),(2); 18B-207; 18B-1205; 18B-1207(c); 150B-23.

SECTION .0900 - FISCAL RULES FOR LOCAL BOARDS

.0901 BORROWING MONEY

Before a local board borrows money, it shall consider the following factors:

- (1) the number of stores in a service area;
- (2) the estimated population in a service area;
- (3) the location of stores in a service area;
- (4) the nature and amount of the outstanding debt of the local board;
- (5) whether the borrowing is for the purchase of fixed assets, inventory or both;
- (6) the adequacy of the accounting system used or proposed to be used by the local board;
- (7) ~~the unit's~~ its compliance with rules of the Commission;
- (8) history of operating profits; and
- (9) projected profits and ~~adequacy~~ ability to ~~cover~~ retire the debt.

Statutory Authority G.S. 18B-702(b),(e).

.0902 MAINTENANCE OF WORKING CAPITAL

(a) "Working Capital" means the total of cash, investments and inventory less all unsecured liabilities.

(b) A local board shall set its Working Capital requirements at not less than two weeks' average gross sales of the ~~last~~ latest fiscal year nor greater than four months' average gross sales of the ~~last~~ latest fiscal year. Gross sales means gross receipts from the sale of alcoholic beverages less distributions as defined in G.S. 18B-805(b)(2),(3), and (4).

Statutory Authority G.S. 18B-702 (e); 18B-805 (d).

.0906 FINANCE OFFICER: DUTIES

(a) The general manager of each local board shall serve as finance officer. The local board may designate deputy finance officers to aid the officer in the performance of his duties and perform other duties delegated to them by the finance officer or the local board.

(b) The finance officer shall: ~~have the following duties:~~

- (1) ~~He shall~~ keep the accounts of the local board in accordance with generally accepted principles of governmental accounting and the rules of the Commission;
- (2) ~~He shall~~ disburse all moneys of the board in strict compliance with these Rules;
- (3) ~~He shall~~ prepare statements of financial condition as often as the governing board ~~required~~ requires information;
- (4) ~~He shall~~ receive and deposit all moneys received or supervise the receipt and deposit of money by other authorized employees;
- (5) ~~He shall~~ supervise the investment of idle funds of the local board;
- (6) ~~He shall~~ ensure that all internal controls established by the local board are followed; and
- (7) ~~He shall~~ perform other duties as may be assigned to him by law, by the local board or by the rules of the Commission.

Statutory Authority G.S. 18B-702(e).

.0909 TRAVEL POLICIES

(a) Travel Policy Required. Each local board shall adopt and adhere to rules establishing travel policies to govern the following activities:

- (1) responsibility of board members and employees in incurring expenses while travelling on board business;
- (2) modes of transportation authorized for travel on official business;
- (3) reimbursement allowances for travel, including mileage reimbursements;
- (4) reimbursement allowances for lodging and meals;
- (5) reimbursement allowances for conference or convention registration fees;
- (6) travel advances;
- (7) authorization for travel;
- (8) incidental travel expenses including tips, tolls, parking fees, taxi fares, and rental vehicles;
- (9) telephone calls made while travelling; and
- (10) reimbursement procedures and documentation of expenses.

The travel policy rules and subsequent amendments shall be made available to each employee and board member.

(b) Rules to Conform to Local or State Policies. Travel policy rules adopted by a local board shall conform, at a minimum, to travel policies adhered to by either the local appointing authority or the Office of State Budget and Management of the State of North Carolina.

(c) Rules to be Filed with Commission. Each local board shall file a certified copy of its travel policies and procedures, and any amendments thereto, with the Commission within 10 days of the adoption, or amendment, of the policies by the local board.

Statutory Authority G.S. 18B-702(e).

SECTION .1000 - LOCAL ABC BOARD: PERSONNEL POLICIES

.1008 CONFLICTS OF INTEREST

(a) Financial Interest Prohibited. No local board member or employee shall have any direct or indirect interest in any manner whatsoever in any firm, corporation, company or enterprise that manufactures, produces, buys, mixes, bottles, sells, stores or transports spirituous liquors.

(b) Employment of Relatives. No local board shall employ in any capacity any person related to a local board member or member of any other authority that appoints members of the local board by blood to a degree of first cousin or closer, nor shall the spouse of any board member be employed by the board.

(c) Employment of Board Members. No member of a local board shall be employed in any capacity by the board, nor be paid or receive

any compensation of any kind from the board, except for compensation as a member thereof, which compensation has been established by the ~~Board or other~~ appointing authority. No local board member nor ~~other member of the local~~ governing authority that appoints members of the local board shall be appointed as manager of a store, or manager, supervisor, director or administrator of the local system. No member of a board or other appointing authority that appoints members of a local board shall be employed in any capacity by that local board. The local board shall carry out its powers and duties as a board and shall not delegate the operation of the system to individual members.

(d) Contracts Prohibited. Members of a local board, acting on behalf of the board, shall not enter into any contracts or agreements or be in any manner interested in any contract or agreement for their own benefit or in the profits thereof, whether privately, openly, singly, or jointly with another member of a local board.

Local boards shall not, on behalf of the board, enter into any contract or agreement of any kind with:

- (1) any member of any other authority that appoints members of the local board;
- (2) any person who is related by blood to any member of the board to a degree of first cousin or closer; or
- (3) any spouse of a board member.

(e) Membership on Appointing Board Prohibited. No member of the local board shall be a member of the appointing authority that appoints the local board while serving as a member of that local board.

(f) Exceptions. Notwithstanding the provisions of this Section, the Commission may grant exceptions from this Rule in cases of extreme hardship and where the public interest would not be placed in jeopardy.

Statutory Authority G.S. 18B-201; 18B-207; 18B-700 (g).

.1009 PERSONNEL MANUAL

(a) Each local board shall establish policies and rules governing each of the following:

- (1) Initial employment of employees, including qualifications and requirements for new employees;
- (2) Compensation and benefits;
- (3) Hours and days of work, holidays, vacation, sick leave and other matters pertaining to the conditions of employment;
- (4) Promotion, transfer, demotion and suspension of employees;
- (5) Separation or termination of employees;

PROPOSED RULES

- (6) Granting of salary increases;
- (7) Employee grievance procedures; and
- (8) Any other programs or procedures as may be necessary to promote efficiency and to provide for a fair and reasonable system of personnel administration.

(b) A local board is encouraged to model its personnel policies and procedures after those adopted by the county or municipality in which it operates.

(c) A local board shall not adopt a rule or policy that conflicts with the provisions of Chapter 18B or these Rules.

Statutory Authority G.S. 18B-203 (a) (10); 18B-701(2); 18B-807.

SECTION .1200 - OPENING AND DISCONTINUANCE OF STORES

.1203 APPROVAL OF NEW STORES

(a) Notice to Commission. The opening of any new ABC stores will not be approved by the Commission unless at least 30 days notice is given to the chairman as to the intended location of such store and until a public notice of the intention to open such ABC store has been posted for 30 days at such location.

(b) Sign Requirements. In order to meet the public notice requirements of Paragraph (a) of this Rule, the local board shall post at least one sign at the proposed new store site in accordance with all the following requirements:

- (1) Dimensions of the sign shall total at least three square feet;
- (2) The Board shall state on the sign its intention to open an ABC store on the site;
- (3) Lettering and background colors shall be of sufficient contrast, and lettering shall be of sufficient size, so that the notice will be legible to passersby;
- (4) The sign shall be posted within three feet of the public road or sidewalk that will run in front of the proposed store, or if the proposed store will be in a shopping center, the sign shall be posted on the front exterior of the existing storefront or building.

Statutory Authority G.S. 18B-207; 18B-801.

.1205 CLOSING OF STORE

An ABC store may be closed when it is not operated in accordance with the ABC laws, when it becomes a nuisance to the community in which it is located or when its continued operation becomes undesirable for financial or any other substantial reason.

Statutory Authority G.S. 18B-207; 18B-801.

SECTION .1400 - PURCHASE OF ALCOHOLIC BEVERAGES BY LOCAL BOARDS

.1401 PURCHASE LIMITED TO APPROVED BRANDS

Except for special orders, no purchases of any spirituous liquor or ~~fortified or unfortified~~ wine shall be made by any local board other than brands approved for resale in ABC stores by the Commission.

Statutory Authority G.S. 18B-207; 18B-800(c).

.1402 PERMIT REQUIRED TO SELL ALCOHOLIC BEVERAGES

No purchase of any spirituous liquor or ~~fortified or unfortified~~ wine for resale in ABC stores shall be made by any local board from any person that does not hold a permit from the Commission authorizing the sale of those beverages to the local boards, except that approved brands of taxpaid liquor may be purchased for resale from the board of county commissioners of any county for an amount not to exceed the usual wholesale price of the liquor when liquor has been confiscated for a violation of the ABC laws. A local board shall purchase fortified wine only from a North Carolina wholesaler who has been issued a wine wholesaler permit.

Statutory Authority G.S. 18B-207; 18B-304(a); 18B-503(e); 18B-1107(a)(2).

.1407 PAYMENT

(a) Local boards shall remit full payment of the contractor's statement of account pertaining to the bailment fee within 30 days of receipt of the statement.

(b) Local boards shall remit full payment of the contractor's statement of account pertaining to the bailment surcharge within ~~30~~ 15 days of receipt of the statement.

(c) Local boards shall remit full payment of the distiller's invoice within 30 days of delivery of the liquor.

Statutory Authority G.S. 18B-207; 18B-702(e).

SECTION .1500 - PRICING OF SPIRITUOUS LIQUOR

.1503 SPECIAL PURCHASE ALLOWANCES; POST OFFS; PASS THROUGHs

(a) Temporary Price Reductions. The Commission will, from time to time, reduce the retail prices of selected liquor products to reflect man-

manufacturer or importer offers of special price reductions.

(b) Selection of Items. Individual liquor products will be selected for retail price reductions based on the following criteria:

- (1) Amount of reduction offered by industry member;
- (2) Profitability of product;
- (3) Sales history of product;
- (4) Quantity of product available; and
- (5) Marketing support offered by industry member.

(c) Offers of Reductions. In order for a product to be considered, an industry member shall file, within the time set by the Commission, special purchase allowances offered for its products.

(d) Time Periods. If approved by the Commission, the reduction of the retail price of a liquor product will be in effect for a period of 30 days. The Commission will notify industry members and local boards at least 30 days in advance of the effective date of a reduced price for each approved price reduction.

(e) Supplemental Price Lists. The Commission will publish additional price lists indicating price reductions to supplement the quarterly price lists published in February, May, August and November of each year. Supplemental price lists shall be made available by each local board in each of its ABC stores, and all reduced prices shall be posted by either affixing the price of the product to the shelf or affixing a price sticker on the container. Additional signs may be utilized by an ABC store to notify customers of the price reductions.

(f) Reduced Prices Effective Statewide. A local board that sells a product selected for a temporary price reduction shall sell that product at the reduced price for the entire period the lower price is in effect.

Statutory Authority G.S. 18B-203(a)(3); 18B-207; 18B-702(e); 18B-804; 18B-807.

SECTION .1700 - RETAIL SALES OF ALCOHOLIC BEVERAGES

.1701 REMOVAL OF BEVERAGES FROM ABC STORES

(a) Spirituos ~~liquors~~, liquor, either distressed or otherwise, shall not leave the custody of a local board after receipt unless:

- (1) The spirituos ~~liquors~~ are liquor is sold at retail; or
- (2) ~~They are~~ The liquor is returned to the state ABC warehouse.

Any spirituos ~~liquors~~ liquor leaving the local board without being sold at retail or returned to

the state ABC warehouse ~~constitute~~ constitutes nontaxpaid spirituous ~~liquors~~, liquor.

(b) Distressed ~~Liquors~~, Liquor. Distressed ~~liquors~~ liquor shall be destroyed and the destruction witnessed by the manager or his designee and a distiller representative. A Destruction of Unsaleable Merchandise Report shall be completed and signed by the witnessing parties. Copies of the report shall be sent to the distiller and the Commission.

(c) No sales of alcoholic beverages shall be made to employees, board members or other retail customers on credit. This Rule shall not prohibit purchases made by the use of credit cards where such sales are permitted by the Commission.

Statutory Authority G.S. 18B-806; 18B-807.

.1703 STORES: STATE LIST

(a) Appearance of Stores. Stores shall be well-lighted and immaculately clean at all times. Stores not in compliance may be ordered closed by the Commission until deficiencies are corrected.

(b) Display of Beverages. All beverages shall be displayed equally and no vendor's representative may interfere with or suggest how his product should be displayed.

(c) Display Cases. Display cases may be used in stores upon approval by the local board. When display cases are used, one bottle of each item or brand sold by the store shall be displayed in the case and each item or brand shall be properly priced in the display.

(b) (d) State List to be ~~Posted~~, Available. Every store shall ~~post~~ make available for its customers' inspection a copy of the most current complete state price list in the lobby, and any supplemental price lists. A local board may draw up and post its own price list for items or brands sold in its stores, provided the items and prices listed on the local list are also listed on the complete state list.

Statutory Authority G.S. 18B-807.

.1704 SALE OF WINE

(a) Fortified wine may be sold by a local board in one or more of its stores.

(b) Except as provided in G.S. 18B-800(b)(2), or as specifically provided in a local act permitting the sale of unfortified wine by a local board, such wine shall not be sold in a local store.

Statutory Authority G.S. 18B-800 (b); 18B-804 (c); 18B-807.

.1707 SALES RECOMMENDATIONS PROHIBITED

Sales talks or recommendations by employees for or against any particular item or brand of alcoholic beverage are forbidden.

Statutory Authority G.S. 18B-807.

.1708 MAXIMUM QUANTITIES ALLOWED TO BE SOLD

Employees of local boards are expressly prohibited from selling more than ~~four~~ five liters of fortified wine or spirituous liquor or more than ~~20~~ five liters of ~~unfortified wine~~ the two combined to a person at any one time, except as authorized under G.S. 18B-403 and G.S. 18B-404.

A copy of all Purchase/Transportation Permits shall be maintained by local boards for a period of one year following issuance. A copy of all Mixed Beverages Purchase/Transportation Permit/Invoice forms shall be retained by the local board for a period of at least three years.

Statutory Authority G.S. 18B-207; 18B-403; 18B-404; 18B-807.

.1710 CREDIT CARD SALES

A local board may allow customers to purchase alcoholic beverages with credit cards so long as all the following conditions are met:

- (1) The local board files with the Commission a written request for approval to implement the use of credit cards, and furnishes in that request the following:
 - (a) proposed date of implementation;
 - (b) proposed bank or institution for clearing;
 - (c) proposed discount rate; and
 - (d) whether instant verification equipment will be used;
- (2) The local board must receive written authorization from the Commission to allow credit card sales; and
- (3) The minimum alcoholic beverage purchase that may be charged to a credit card is twenty dollars (\$20.00).

Statutory Authority G.S. 18B-203 (b); 18B-702 (e); 18B-807.

SECTION .1800 - PURCHASE - TRANSPORTATION PERMITS FOR INDIVIDUALS AND MIXED BEVERAGES PERMITTEES

.1801 PURCHASE-TRANSPORTATION PERMITS: WINE: LIQUOR

(a) Local Board to Issue. Whenever a person desiring to purchase more than 20 liters of unfortified wine, or more than ~~four~~ five liters of ei-

ther fortified wine or spirituous liquor or ~~four~~ five liters of the two combined, applies to a local board for a Purchase-Transportation Permit, the local board shall issue the purchaser such a permit, following the guidelines of G.S. 18B-403.

(b) Form. The Purchase-Transportation Permit shall be issued on a printed three-part form and shall specify the following information on the face of the permit:

- (1) the name and location of the store from which the purchase is to be made;
- (2) whether the purchase is for unfortified wine, fortified wine or spirituous liquor;
- (3) destination of the alcoholic beverages including name and address of location;
- (4) Special Occasions Permit number of a location, if alcoholic beverages are purchased for a special occasion;
- (5) time and date of commencement and conclusion of special occasion, if any;
- (6) quantity and type of alcoholic beverages purchased;
- (7) signature of local ABC official issuing the permit;
- (8) name, address and driver's license number of purchaser.

The form shall contain a statement that the permit is valid for only one purchase on the date shown and will expire at 9:30 p.m. on the date of purchase and a further statement that the permit shall accompany the beverages during transport and storage and be exhibited to any law enforcement officer upon request.

(c) A local board issuing a Purchase-Transportation Permit shall retain one copy of the permit in its files for a period of one year and give the purchaser two copies, one of which the purchaser will give the store from which the alcoholic beverages are purchased.

Statutory Authority G.S. 18B-207; 18B-303(a); 18B-403.

.1803 CABINET PERMITTEES; PURCHASE -TRANSPORTATION PERMITS

(a) Approved Container Sizes; Authorized Jurisdictions. Local ABC Boards in the following counties may sell 50 milliliter, 355 milliliter, and 375 milliliter containers of liquor to a hotel that has been issued a Guest Room Cabinet Permit: Buncombe, Cumberland, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Moore and Wake.

(b) Purchase-Transportation Permits. A local board receiving an order from a guest room cabinet permittee for liquor intended for resale from guest room cabinets shall provide a separate Purchase-Transportation Permit/Invoice form

for the permittee in the same manner as for sales of liquor for mixed beverages permittees, as specified in Rule .1802 of this Section. The Purchase-Transportation Permit Invoice shall contain all the information required by 4 NCAC 2S .0502(b) of this Chapter, and in addition, shall show on the face of the form the permittee's Guest Room Cabinet Permit number. One copy of the Purchase-Transportation Permit/Invoice form for guest room cabinet permittees shall be retained by the local board for a period of three years.

(c) Minimum Orders. A local board may require a guest room cabinet permittee to make a minimum purchase of multi-bottle packages or "sleeves" packaged by the manufacturer or bottler, but may not require minimum purchases in case quantities except as authorized by Rule .1404 of this Subchapter.

Statutory Authority G.S. 18B-205; 18B-207; 18B-404(d); S.L. 1991, c. 565, s. 7.

.1804 TAX STAMP PROCEDURES FOR GUEST ROOM CABINET PERMITTEES

(a) A local board selling liquor for resale in guest room cabinets shall either affix the mixed beverages tax stamp to each individual container of liquor sold to a guest room cabinet permittee, or shall give the permittee one tax stamp for each container purchased so the permittee may affix the stamps to the containers so long as the unaffixed stamps conform to the requirements in Paragraph (b) of this Rule.

(b) A local board choosing to give unaffixed mixed beverages tax stamps to a guest room cabinet permittee shall use a stamp substantially different in size and color from the mixed beverages tax stamp used for regular mixed beverages sales.

(c) Each mixed beverages tax stamp for liquor sold to a guest room cabinet permittee shall contain the same information required by Rule .1901 of this Subchapter, except that the permittee's Guest Room Cabinet Permit number shall appear on the stamp in lieu of the permittee's Mixed Beverages Permit number.

(d) Nothing in this Rule shall be construed to allow a local board to give unaffixed mixed beverages tax stamps to a mixed beverages permittee for liquor containers purchased for resale in mixed beverages.

Statutory Authority G.S. 18B-203(a)(1); 18B-207; 18B-804(b)(9); 18B-807.

.1805 LOCAL RULES REQUIRED FOR GUEST ROOM CABINET SALES

(a) Each local board selling liquor to a hotel with a Guest Room Cabinet Permit shall adopt rules governing purchases of liquor by guest room cabinet permittees and shall submit those rules to the Commission for approval as required by Rule .1102 of this Subchapter.

(b) Areas to be regulated shall include:

- (1) minimum purchase requirements;
- (2) responsibility for affixing tax stamps;
- (3) pre-ordering requirements;
- (4) special orders; and
- (5) times when sales shall be made.

(c) Upon approval by the Commission, the local board shall provide a copy of such rules to each guest room cabinet permittee, and shall have a copy available on the premises of the store from which sales will be made.

Statutory Authority G.S. 18B-203(a)(10); 18B-207; 18B-701(2); 18B-807.

SECTION .1900 - SALES OF LIQUOR TO MIXED BEVERAGES PERMITTEES

.1901 MIXED BEVERAGES TAX STAMP

(a) Prior to the sale of any container of spirituous liquor to a permittee, the local board shall affix to the container a mixed beverages tax stamp that indicates the following:

- (1) local board system of sale,
- (2) permittee's transaction number,
- (3) permittee's Mixed Beverage Permit number.

(b) The mixed beverages tax stamp shall be affixed to the original paper labeling of each container, except that in the case of a container bearing no original label the stamp shall be affixed to any conspicuous portion of the container. In no event may the stamp be affixed to the cap or closure of a container. Where a case of one brand has been purchased, the mixed beverages tax stamp shall be affixed to each container in the case and it shall not be sufficient to stamp the container of the entire exterior of the case.

(c) For sales of liquor to a guest room cabinet permittee, a local board may affix the mixed beverages tax stamp to any portion of the container other than the cap or closure. In lieu of affixing the stamp to each container purchased by a guest room cabinet permittee, a local board may choose to give to the guest room cabinet permittee one tax stamp for each container of liquor purchased for resale from a guest room cabinet, as authorized by Rule .1804 of this Subchapter.

PROPOSED RULES

Statutory Authority G.S. 18B-203(a)(1); 18B-207; 18B-804(b)(8); 18B-807.

.1903 LOCAL BOARD PRODUCT IDENTIFICATION

Prior to the sale of any container of spirituous liquor to the public at retail, the local board shall affix to the container or the individual container's packaging a stamp ~~or label~~ that indicates the following:

- (1) local board system of sale; ~~and~~
- (2) local board store number. ~~and~~
- (3) ~~North Carolina product code number.~~

Statutory Authority G.S. 18B-807.

SUBCHAPTER 2S - RETAIL BEER: WINE: MIXED BEVERAGES: BROWNBAGGING: ADVERTISING: SPECIAL PERMITS

SECTION .0100 - DEFINITIONS: PERMIT APPLICATION PROCEDURES

.0101 DEFINITIONS

In addition to the definitions found in Sections 18B-101 and 18B-1000 of the North Carolina General Statutes, the following definitions apply to this Subchapter:

- (1) "Employee" means any person who performs a service for any person holding a an ABC permit, regardless of whether that person is compensated for the performance of those services.
- (2) "Premises" means that building or area of a building plus any other property immediately adjacent to it that forms a component or integral part of the business for which the permit is issued. A diagram attached to the investigative report and kept in the permittee's file is prima facie evidence of the premises covered by that permit and for which the permittee and his employees are responsible. Permits shall authorize the sale and possession or consumption of alcoholic beverages only on the premises described in the investigative report and diagram furnished by the investigating agent.
- (3) "Original container" means a bottle, can or other alcoholic beverage product container filled by a manufacturer or bottler that has been approved for sale within this State.
- (4) "Private dining area" means any area of a restaurant or hotel that is or can be substantially closed off from public view.
- (5) "Modified Plan Permits," as used in Rules .0105 and .0106 of this Section, mean on-premise malt beverage permits authorized by elections held pursuant to G.S. 18B-602(a)(4).

Statutory Authority G.S. 18B-207; 18B-602 (a)(4); 18B-1008.

.0102 APPLICATIONS FOR PERMITS: GENERAL PROVISIONS

(a) Forms. Application forms for all ABC permits may be obtained from the North Carolina Alcoholic Beverage Control Commission at the following address, or by telephoning the Commission between 8:00 a.m. and 5:00 p.m., Monday through Friday:

North Carolina ABC Commission
3322 Garner Road
P.O. Box 26687

Raleigh, North Carolina 27611-6687

(b) Statutory Requirements. Before the issuance of any ABC permit, an applicant shall comply with the statutory requirements of Articles 9 and 10 of Chapter 18B of the General Statutes and with the rules of the Commission.

(c) Separate Permits Required. An applicant operating separate buildings or structures not connected directly with each other or businesses with separate trade names shall obtain and hold separate permits for each building or business for which he wants permits, and he shall pay the appropriate application fees as provided in G.S. 18B-902(d). Where there are multiple buildings, and the Commission determines that the business is operated as one entity, the Commission may, in its discretion, issue one permit.

(d) Information Required on Application. An applicant for any ABC permit shall file a written application with the Commission and in the application shall state, under oath, the following information:

- (1) name and address of applicant;
- (2) corporate or partnership name;
- (3) mailing address of and location address of business for which permit is desired, and county in which business is located;
- (4) trade name of business;
- (5) name and address of owner of premises;
- (6) applicant's date and place of birth;
- (7) if a corporation, the name and address of agent or employee authorized to serve as process agent (person upon whom legal service of Commission notices or orders can be made);
- (8) if a non-resident, name and address of person appointed as attorney-in-fact by virtue of duly executed and registered power of attorney; and
- (9) a detailed diagram of the premises showing:
 - (A) entrances and exits;
 - (B) storage area for alcoholic beverages;

(C) locations where alcoholic beverages may be served or consumed.

In addition, an applicant shall state, under oath, that he is the actual and bona fide owner or lessee of the premises for which a permit is sought and shall submit a copy or memorandum of the lease showing the applicant as tenant, or a copy of the deed showing the applicant as the grantee or owner; that he intends to carry on the business authorized by the permit himself or under his immediate supervision and direction; and that he is an actual and bona fide resident of the State of North Carolina or, as a non-resident, has appointed, by virtue of a duly executed and registered power of attorney, a resident manager to serve as attorney-in-fact who will manage the business and accept service of process and official Commission notices or orders.

(e) General Restriction; Living Quarters. No permit for the possession, sale or consumption of alcoholic beverages shall be issued to any establishment when there are living quarters connected directly thereto, and no permittee shall establish or maintain living quarters in or connected to his licensed premises.

(f) General Restriction; Restrooms. No permit for the on-premises possession, sale, or consumption of alcoholic beverages shall be issued to any establishment unless there are two restrooms in working order on the premises. This requirement may be waived for good cause shown.

(g) Areas for Sales and Consumption. In determining the areas in which alcoholic beverages may be sold and consumed, the Commission will consider the convenience of the permittee and his patrons, allowing the fullest use of the premises consistent with proper control, but will attempt to avoid consumption in areas open to the general public other than patrons.

(h) Temporary Permits for Continuation of Business. In its discretion the Commission may issue temporary permits to an applicant for the continuation of a business operation that holds current ABC permits when a change in ownership or location of a business has occurred. To obtain a temporary permit an applicant shall submit the appropriate ABC permit application form, all required fees, a lease or other proof of legal ownership or possession of the property on which the business is to be operated, and a written statement from the ALE agent in that area stating that there are no pending ABC violations against the business. An applicant for a temporary permit should also submit the permits of the prior permittee for cancellation prior to the issuance of any temporary permit. No temporary permit shall be issued to any applicant unless

all prior ABC permits issued for the premises have been cancelled by the Commission.

(i) Retail Sales at Public Places Restricted. The sale and delivery of alcoholic beverages by licensed retail outlets located on fair grounds, golf courses, ball parks, race tracks, and other similar public places are restricted to an enclosed establishment in a designated place that has been approved by the Commission. No alcoholic beverages, shall be sold, served, or delivered by these outlets outside the enclosed establishment, nor in grandstands, stadiums or bleachers at public gatherings.

As used in this Rule, the term "enclosed establishment" shall include a temporary structure or structures constructed and used for the purpose of dispensing food and beverages at special events to be held on fairgrounds, golf courses, ball parks, race tracks, and other similar places.

Sales of alcoholic beverages may be made in seating areas such as box seats only under the following conditions:

- (1) table service of food and non-alcoholic beverages are available to patrons in box seats;
- (2) no alcoholic beverages are delivered to the box seats area until after orders have been taken; and
- (3) box seat areas have been designated as part of the permittee's premises on a diagram submitted by the permittee, and the Commission has granted written approval of alcoholic beverage sales in these seating areas.

(j) Separate Locations at Airport. If one permittee has more than one location at the terminal of an airport boarding at least 150,000 passengers annually and that permittee leases space from the airport authority, the Commission recognizes that allocation of space is controlled by the airport authority. Therefore, the permittee in such a situation may:

- (1) obtain a single permit for all its locations in the terminal;
- (2) use one central facility for storing the alcoholic beverages it sells at its locations; and
- (3) pool the gross receipts from all its locations for determining whether it meets the requirements of G.S. 18B-1000(6) and Rule .0519 of this Subchapter.

(k) Food Businesses. Unless the business otherwise qualifies as a wine shop primarily engaged in selling wines for off-premise consumption, a food business will qualify for an off-premise fortified wine permit only if it has and maintains an inventory of staple foods worth at least one thousand five hundred dollars

(\$1,500) at retail value. Staple foods shall include meat, poultry, fish, bread, cereals, vegetables, fruits, vegetable and fruit juices and dairy products. Staple foods do not include coffee, tea, cocoa, soft drinks, candy, condiments and spices.

Statutory Authority G.S. 18B-207; 18B-900; 18B-901(d); 18B-902; 18B-903; 18B-905; 18B-1000(3); 18B-1008.

.0103 CORPORATIONS HOLDING PERMITS

(a) Filing Applications. The manager of every corporation applying for or holding any ABC permit, except for corporations holding only off-premise malt beverage, unfortified wine or fortified wine permits, shall file the appropriate application with the Commission and qualify under the provisions of G.S. 18B-900.

(b) Corporations With Off-Premise Permits Only. Corporations applying for or holding only off-premise permits for the sale of malt beverages or wine shall post on the premises, in the same area as the posted ABC permits, the full name, home address and phone number of the current manager of the establishment.

(c) Changes in Management; New Managers. Whenever the manager of a corporation other than a corporation holding only off-premise malt beverage and wine permits changes, the new manager shall file application with the Commission, submit a fee of ten dollars (\$10.00), and qualify under the provisions of G.S. 18B-900 within 30 days of his employment.

(d) Transferred Managers. When a person who has previously filed application and qualified with the Commission is subsequently transferred by a corporate permittee that holds on-premise or brownbagging permits to a different licensed location operated by the same corporation, he is not required to file an additional application. He shall, however, notify the Commission in writing of the transfer and the new location's address, including the permit numbers of current ABC permits held at the newly assigned location.

Any corporation holding an ABC permit in this State that seeks permits for any additional business location shall have the manager of the new location file the appropriate application and fee, and qualify under G.S. 18B-900(a).

Statutory Authority G.S. 18B-207; 18B-900; 18B-902(a); 18B-903(d).

.0105 SPECIAL REQUIREMENTS FOR RESTAURANTS

(a) Requirements to Qualify for Brownbagging, on-premise Fortified Wine, Mixed Beverages, or Modified Plan Permits. To qualify as a restaurant

for a Brownbagging, on-premise Fortified Wine or Mixed Beverages Permit, or a Malt Beverages Permit in areas approving on-premise malt beverages under G.S. 18B-602(a)(4), a business shall have an inside dining area set aside for the service of meals that contains table seating for at least 36 persons. No table less than 720 square inches of surface area shall be considered in determining whether a restaurant has table seating for 36. Food shall be available at all times that alcoholic beverages are being served.

(b) Lounges. A restaurant may also include an adjacent lounge, which is a space separate from the dining area and which shares a common kitchen with the dining area. The adjacent lounge need not contain 36 seats by itself or serve full meals as long as food is available in the lounge while alcoholic beverages are being served.

(b) (c) Typical Characteristics. Although a facility need not possess all of the following characteristics to qualify as a restaurant, each is typical of a bona fide restaurant and the Commission may consider the extent to which a facility possesses these characteristics in deciding whether to issue, suspend, or revoke the permits listed in Paragraph (a):

- (1) The facility has a printed menu listing full meals with substantial entrees;
- (2) The facility has complete cooking and refrigeration equipment;
- (3) The greatest portion of the food sold is prepared in the facility's own kitchen and prepackaged food is only an incidental part of the sales;
- (4) The greatest portion of the food sold is consumed on the premises;
- (5) There are separate kitchen and service staffs;
- (6) Seating for dining customers is primarily at tables; and
- (7) Only a small portion of the premises is devoted to activities unrelated to the service and consumption of food; and
- (8) Sales of food are significantly greater than sales of nonalcoholic beverages, especially nonalcoholic beverages sold as "set-ups."

(c) (d) Requirements for Application. For a restaurant to obtain a permit listed in Paragraph (a), the applicant shall submit to the Commission the appropriate application fee and the following documents:

- (1) a completed application on a form provided by the Commission, which shall include the full names and addresses of all owners, officers, directors, shareholders owning 25 percent or more of the stock, and the manager; if, however, a corpo-

ration holds any other ABC permit, application by the manager shall be sufficient;

- (2) a copy of the restaurant's menu or list of food served;
- (3) photographs ~~(black and white or color) measuring no smaller than five inches by seven inches of the following:~~ of sufficient detail to show the following:
 - (A) entire kitchen, including all equipment;
 - (B) all dining areas, showing seating arrangements, including patios or outdoor areas where alcoholic beverages may be sold or consumed;
 - (C) bars, counters, mixing stations;
 - (D) locked storage area or areas for storage of alcoholic beverages;
 - (E) front exterior of premises or if establishment is located in an office building, mall or other larger structure, the main entrance.
- (4) ~~a financial statement, on a form provided by the Commission, for each of the preceding six months, or for each month of operation of the restaurant if less than six months, showing: gross receipts from the sale of food and non-intoxicating beverages; gross receipts from the sale of malt beverages and wine, if any; and gross receipts from the sale of all other items. If an applicant has not previously been in operation, a projected financial statement estimating gross receipts for food and beverage items shall be filed on a form provided by the Commission.~~

Statutory Authority G.S. 18B-207; 18B-900; 18B-901; 18B-902; 18B-1000(6); 18B-1008.

.0106 SPECIAL REQUIREMENTS FOR HOTELS

(a) Requirements to Qualify for Brownbagging, on-premise Fortified Wine, Mixed Beverages, or Modified Plan Permits. To qualify as a hotel for a Brownbagging or a Mixed Beverages Permit, or a Malt Beverage Permit in areas approving on-premise malt beverages under G.S. 18B-602(a)(4), an establishment shall have on or closely associated with its premises a full-service restaurant providing at least 36 seats. ~~at tables.~~ The restaurant may or may not be owned by the same person who owns the hotel. If the restaurant is owned by a person different from the owner of the hotel, permits shall ~~be~~ not be issued to the restaurant unless it qualifies under Rule .0105 of this Section.

(b) For a hotel with a restaurant to obtain one of the permits listed in Paragraph (a), the appli-

cant shall submit to the Commission, the appropriate application fee and the following documents:

- (1) a completed application on a form provided by the Commission, which shall include the full names and addresses of all owners, officers, directors, shareholders owning 25 percent or more of the stock, and the manager; if, however, a corporation holds any other ABC permit, application by the manager is sufficient;
- (2) a copy of the restaurant's menu or a list of food served;
- (3) photographs ~~(black and white or color) measuring no smaller than five inches by seven inches of the following:~~ of sufficient detail to show the following:
 - (A) entire kitchen including all equipment;
 - (B) all permanent dining areas, showing seating arrangements, including patio or outdoor areas where alcoholic beverages might be served or consumed;
 - (C) bars, counters and mixing stations;
 - (D) locked storage area or areas; and
 - (E) front exterior of ~~premises;~~ hotel and restaurant.
- (4) ~~a financial statement, on a form provided by the Commission, for each of the preceding six months, or for each month of operation of the hotel if it is less than six months, showing the following: gross receipts from the furnishing of lodging; gross receipts from sale of food and non-alcoholic beverages; gross receipts from the sale of malt beverages and wine, if any; and gross receipts from the sale of all other items. If an applicant has not previously been in operation, a projected financial statement estimating gross receipts for the food, lodging and beverage items shall be filed on a form provided by the Commission.~~

(c) Locations Where Sales Permitted. Brownbagging by patrons, consumption of alcoholic beverages and sales of mixed beverages are allowed at any time during lawful hours in the restaurant and in any lounge or other place that is customarily open to the general public and that is associated with the restaurant. These lounges and other places need not be directly connected to the restaurant as long as the services of the restaurant are available to the lounge at all times that alcoholic beverages are being served. Sales and consumption of mixed beverages are allowed in banquet rooms, convention rooms, suites and similar places not usually open to the general public only during scheduled events and only to persons attending those events. Portable bars

PROPOSED RULES

may be used for the sale or mixing of mixed beverages in those rooms.

(d) Diagram of Premises. The diagram of the premises submitted with the application for a permit under this Rule and the diagram approved by the Commission when the permit is issued shall be marked to indicate which spaces are considered part of the restaurant and lounge or other places associated with the restaurant and customarily open to the general public, and which spaces are considered banquet rooms, convention rooms, meeting rooms, suites, and similar places where mixed beverages are to be sold only during scheduled events.

(e) Managers' Receptions. Hotels operating lodging, restaurant and lounge facilities under one set of ABC permits may offer lodging guests up to two alcoholic beverages per guest per day in the price of the room package under the following conditions:

- (1) The reception or social hour is held on the licensed premises of the hotel;
- (2) The hotel issues a voucher for the beverages that can be used by the guest to obtain the beverage of his choice;
- (3) Nonalcoholic beverages shall also be offered to lodging guests during the function; and
- (4) The hotel must account for the beverages by an internal accounting procedure to insure that the price of each beverage included in the room rate package is the same price as is being charged other patrons in the lounge or restaurant for the same beverage. This procedure must be acceptable to the Commission's Audit Division.

(f) Guest Room Cabinet Permits; Application Requirements. Applications for a Guest Room Cabinet permit will be accepted only from hotels with Mixed Beverages permits, or from hotels simultaneously applying for Mixed Beverages permits, in the following counties: Buncombe, Cumberland, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Moore and Wake.

In addition to the general requirements for permit applications in this Rule and in Rule .0102 of this Section, a hotel applying for a Guest Room Cabinet permit shall submit the following items along with the completed application form and appropriate fee:

- (1) List of lodging rooms by room number in which cabinets will be placed;
- (2) Total number of lodging rooms and total number of rooms set aside that will not have a cabinet;
- (3) Description of cabinets to be installed by the hotel. A manufacturer's brochure de-

scribing the cabinet will be sufficient, or the permittee may submit photographs and a written description of the lock used on the cabinet;

- (4) Written policies developed by the permittee regarding the procedures that will be implemented by the hotel to:
 - (A) insure no one under 21 is able to obtain a key to the cabinet;
 - (B) control inventory;
 - (C) insure price lists for items sold from cabinets are easily readable;
 - (D) dispose of all opened alcoholic beverage containers sold from cabinets after guest has checked out;
 - (E) maintain adequate numbers of ice and soft drink vending machines elsewhere on the premises.

Statutory Authority G.S. 18B-207; 18B-900; 18B-901; 18B-902; 18B-1000(4); 18B-1001(12); 18B-1008; S.L. 1991, c. 565, s. 7.

.0107 SPECIAL REQUIREMENTS FOR PRIVATE CLUBS

(a) Definition. A private club is a private facility organized and operated by a person, association or corporation solely for a social, recreational, patriotic or fraternal purpose. Use of the facility shall not be open to the general public but shall be limited to members of the private club and their guests.

(b) Typical Characteristics. Although a facility need not possess all of the following characteristics to qualify as a private club, each is typical of a bona fide club and the Commission will consider the extent to which a facility possesses these characteristics in deciding whether to issue, suspend, or revoke a Brownbagging, Fortified Wine or Mixed Beverages Permit:

- (1) Membership is subject to clearly stated requirements that tend to show a common bond among members;
- (2) Some limit related to the size of the facility is placed on total membership;
- (3) All members may and do participate in its organizational affairs, including the selection of officers or directors at reasonably frequent intervals;
- (4) The club operates pursuant to a charter, articles of association, constitution, or similar basic document and has adopted by-laws, copies of which are provided to each member;
- (5) The club has clearly stated objectives of a social, recreational, patriotic or fraternal nature and its activities advance those objectives;

- (6) Membership entitles a person to significant privileges other than the consumption of alcoholic beverages;
- ~~(7) Initiation and membership fees are substantially greater than what would be paid by a one-time or casual user of the facilities;~~
- ~~(7) (8) Most members hold full rather than limited memberships;~~
- ~~(9) Initiation or membership fees, as distinguished from admission fees, are used to mitigate significantly operating expenses;~~
- ~~(8) (10) Facilities and activities other than those customarily related to the consumption of alcoholic beverages are available to members;~~
- ~~(9) (11) Some limits are placed on the number of times a guest may use the facilities;~~
- ~~(10) (12) Guests constitute a relatively small portion of the users of the facility.~~
- (c) Mandatory Requirements. To qualify as a private club, a facility shall meet the following requirements concerning membership:
 - (1) collect an annual membership fee separate from any admission or cover charge, no dues from which may be more than 30 days past due;
 - (2) maintain a written policy on the granting of full and limited memberships;
 - (3) require each prospective member to complete a written application that contains questions directly related to the applicant's interest in the social, patriotic, fraternal or recreational purpose of the club, the applicant's qualifications for membership, and the applicant's background;
 - (4) retain each completed application, if approved, in the organization's permanent records as long as the individual's membership continues;
 - ~~(5) have a membership committee of at least three persons who review all applications for membership and make recommendations to the full membership;~~
 - ~~(5) (6) grant no membership sooner than three days after receipt of application;~~
 - ~~(6) (7) issue written or printed evidence of membership to each member, which evidence of membership or other reasonably reliable document of identification shall be in the possession of each member present on the licensed premises;~~
 - ~~(7) (8) maintain on the premises a current alphabetical roster of all members and their complete addresses;~~
 - ~~(8) (9) maintain and provide to each member a written policy concerning the use of facilities by guests.~~
- (d) Permit Application Procedures. For a private club to obtain a Brownbagging or a Mixed Beverages Permit, the applicant shall submit to the Commission the appropriate application fee and the following documents:
 - (1) a completed application on a form provided by the Commission, which shall include the full names and addresses of all officers and directors (including those chosen by the membership), and the manager; and the members of the committee who review applications for memberships;
 - (2) the written policy on granting of full and limited memberships;
 - (3) a copy of the membership application form;
 - (4) a copy of the membership card or certificate to be issued to members;
 - (5) the written policy on use of facilities by guests; and
 - (6) the charter, articles of incorporation, constitution, or other basic documents, and the by-laws, if any.

Statutory Authority G.S. 18B-207; 18B-900; 18B-901; 18B-902; 18B-1000(5); 18B-1008.

.0108 ILLEGAL USE OF PERMITS: CHANGE OF OWNERSHIP OR NAME

- (a) No permittee shall allow any other person to use his permit to operate the licensed premises after disposing of his financial interest in the licensed premises.
- (b) A permittee shall not pay any profits derived from the operation of the licensed business to any person who neither owns a financial interest in the business nor performs a service for the business. This restriction shall not, however, prohibit a permittee from entering into a lease by which the landlord is entitled to a percentage of receipts in lieu of or in addition to a periodic rent payment.
- (c) Change in Ownership. A permit shall automatically ~~terminated~~ terminate whenever any change in the ownership of the business, as provided in G.S. 18B-903(c) occurs. Permits issued for a business in which a change of ownership has occurred shall be returned to the Commission or delivered to the State ALE ~~Agent~~ agent assigned to the area.
- (d) Change in Name. When the permittee's name or name of business is changed, the permittee shall apply to the Commission for du-

PROPOSED RULES

uplicate permits in accordance with G.S. 18B-903(g).

Statutory Authority G.S. 18B-207; 18B-901(c); 18B-903(c); 18B-903(g).

SECTION .0200 - GENERAL RULES AFFECTING RETAILERS AND BROWNBAGGING PERMITTEES

.0202 CLEARING TABLES/COUNTERS; HOURS FOR POSSESSION/REMOVAL

(a) Sale Prohibited During Certain Hours. No alcoholic beverages may be sold between the hours of 1:00 a.m. and 7:00 a.m.

(a) ~~(b)~~ Clearing Beverages Off Tables and Counters. All tables and counters shall be cleared of all alcoholic beverages, bottles, cans, glasses and containers by 4:30 2:30 a.m. No permittee or his employees shall allow a patron to possess a container of alcoholic beverages after 2:30 a.m.

(c) Exception. During the period commencing on the last Sunday of April of each year, and ending on the last Sunday of October of each year, alcoholic beverages may be sold until 2:00 a.m., and all tables and counters shall be cleared by 2:30 a.m.

(d) Sunday Sales. The sale of alcoholic beverages shall not resume until 1:00 p.m. on any Sunday.

(b) ~~(c)~~ Removal From Premises. No alcoholic beverages may be removed from any retail licensed premises whenever the sale of alcoholic beverages is prohibited by law.

Statutory Authority G.S. 18B-207; 18B-1004.

.0205 EMPLOYEE AGE REQUIREMENT

(a) Age Requirement: Brownbagging, Mixed Beverages and Special Occasions Permits. Persons holding Brownbagging, Mixed Beverages or Special Occasions Permits shall have an employee who is at least 21 years of age in charge of the licensed premises at all times.

(b) Age Requirement: Malt Beverage, Unfortified Wine and Fortified Wine Permits. Persons holding retail Malt Beverage, Unfortified Wine, or Fortified Wine Permits shall have an employee who is at least 18 years old in charge of the licensed premises at all times.

(c) Bartenders: Brownbagging, Mixed Beverages and Special Occasions Permits. No person under the age of 21 may be employed by any permittee to mix drinks containing spirituous liquors. liquor.

(d) Waiters and Waitresses. No person under the age of 18 may be employed by any permittee in connection with the preparation, serving, sale

or delivery of alcoholic beverages at any establishment holding permits for the on-premises sale or consumption of alcoholic beverages. Ages of persons employed in the preparation, serving, sale or delivery of alcoholic beverages at any establishment holding permits for the on-premise sale or consumption of alcoholic beverages are governed by the provision of The Wage and Hour Act, Article 2A of Chapter 95 of the N.C. General Statutes.

(e) Other Employees: This Rule does not prohibit the employment of a minor by a permittee if the minor does not prepare, serve, sell, or deliver any alcoholic beverages, and if the employment is otherwise lawful under the Wage and Hour Act.

(f) Off-Premise Permits. This Rule does not prohibit the employment of minors at an establishment holding only off-premise permits for the retail sale of malt beverages or wine.

(g) Topless Minors. No permittee may employ or allow any female under the age of 18 to perform any service if the minor exposes to public view or wears transparent clothing that reveals the nipple or any portion of the areola of the breast.

Statutory Authority G.S. 18B-207; 18B-900; 95-25.5 (a), (j); 95-25.14.

.0218 COIN VENDING MACHINES TO DISPENSE BEVERAGES PROHIBITED

(a) No permittee or his employee shall use or permit the use of any automatically operated or coin vending machines for dispensing alcoholic beverages.

(b) In-room bars or cabinets from which alcoholic beverages are dispensed, that are placed in the lodging rooms of a guest room cabinet permittee, shall not be considered automatically operated vending machines.

Statutory Authority G.S. 18B-207; 18B-1001(12).

.0220 TRADE NAME SIGNS

Within 60 days of receipt of his permanent permit, a permittee shall have at least one sign on the exterior of his premises that states the trade name of his premises as it appears on his permit. The sign shall be maintained on the exterior of the premises at all times.

Statutory Authority G.S. 18B-207.

.0221 MAXIMUM QUANTITIES ALLOWED TO BE SOLD

(a) Malt Beverages. No retail malt beverage permittee, or his employee shall sell or deliver to

any one person at any one time more than 80 liters (for example, no more than nine cases of 12-ounce cans plus nine 12-ounce cans, or seven cases of 16-ounce cans plus one 16-ounce can) of malt beverages other than draught beer in kegs.

(b) Wines. No retail fortified or unfortified wine permittee or his employee shall sell or deliver to any one person at any one time more than 20 liters of unfortified wine or more than four liters of fortified wine, except as authorized by a purchase-transportation permit.

Statutory Authority G.S. 18B-207; 18B-303.

.0227 CONTAINER SIZES

Fortified wine may be sold in any original container that holds up to ~~four~~ five liters, and unfortified wine may be sold in any original container that holds up to ~~20~~ 20 liters. ~~All wine containers shall be of glass or other nonmetallic materials, except for bulk containers approved by the commission.~~

Statutory Authority G.S. 18B-206; 18B-207.

.0229 DESTRUCTION OF UNCONSUMED BEVERAGES

Any alcoholic beverages served to a customer that he does not completely consume and that he leaves shall be destroyed immediately, except that a hotel guest cabinet permittee shall not be required to dispose of opened containers of alcoholic beverages sold from an in-room bar or cabinet until after the lodging guest has checked out of the hotel.

Statutory Authority G.S. 18B-206; 18B-207.

.0232 HAPPY HOURS REGULATED

(a) An on-premise permittee or his agent shall not:

- (1) sell more than one drink to a patron for a single price;
- (2) establish a single price based upon the required purchase of more than one drink; or
- (3) deliver more than one drink at one time to a patron for his consumption.

This Rule does not prohibit the sale of pitchers of alcoholic beverages to two or more patrons, if not otherwise inconsistent with the ABC law. This Rule also does not prohibit serving a single carafe or bottle of wine to a single patron.

(b) An on-premise permittee or his agent shall not give away a drink or sell one at a price that is reduced different from the usual or established price charged for the drink for any period of time

less than one full business day. Free or reduced drinks under this provision shall be offered to all customers, not just a segment of the population.

(c) For purposes of this Rule, a "drink" contains the amount of alcoholic beverages usually and customarily served to a single patron as a single serving by the permittee.

(d) Exception for Certain Holidays. An on-premise permittee may include alcoholic beverages in a package offering that includes a meal or entertainment if the offered special is made in conjunction with the following holidays: New Year's, Valentines Day, Mother's Day, or Father's Day.

(e) The offer of a meal and alcoholic beverage at a single total price is not a violation of this Section so long as the total price reflects the actual price of the alcoholic beverages and not a reduced price.

Statutory Authority G.S. 18B-207.

.0233 CONSUMPTION BY UNDERAGE PERSONS

(a) Consumption by Persons Under Age. No permittee or his employees shall knowingly allow a person under the age of 21 to possess or consume any alcoholic beverages on the licensed premises.

(b) Identification. It shall be the duty of the permittee and his employees to determine the age of any person consuming or possessing alcoholic beverages on the licensed premises. Acceptable identification for purposes of determining age shall be a driver's license, a special identification card issued by the North Carolina Division of Motor Vehicles, a military identification card, or a passport.

Statutory Authority G.S. 18B-207; 18B-302; 18B-1005 (a) (1).

.0234 PRIVATE CLUBS: GENERAL PROHIBITIONS; GUESTS

(a) Neither a private club permittee nor his employee shall:

- (1) allow any person who is not a member or a bona fide guest of a member to be present as a patron on the premises of a private club; or
- (2) grant membership to the private club to any person earlier than three days from the receipt of his application for membership.

(b) "House" Guests. No private club permittee or his employee shall admit patrons as "house" guests.

PROPOSED RULES

(c) Employee Member. An employee who is also a member of the private club shall not admit a patron as his guest while that employee is on duty.

(d) A member shall designate his own guest. If a member accepts a patron as his guest at the behest of the private club mixed beverages permittee or employee, then the Commission shall consider that member to be acting as the permittee's agent.

Statutory Authority G.S. 18B-207; 18B-1008.

.0235 PRIVATE CLUBS; RECIPROCAL MEMBERSHIPS

A private club permittee may offer reciprocal memberships to bona fide members of other private clubs under the following conditions:

- (1) Reciprocity may extend only to members of private clubs holding Mixed Beverages or Brownbagging permits issued by the Commission.
- (2) All clubs participating in reciprocal membership arrangements shall enter into a written agreement setting forth the terms of their arrangement, and each club shall adopt rules governing the use of their facilities by reciprocal members. The agreement and rules shall be filed with the Commission and made a part of the permittees' files.
- (3) Private clubs entering into such agreements shall be located in different counties.
- (4) A member of another club who is granted a reciprocal membership shall be required to show a valid membership card indicating he is a bona fide member of the reciprocal club each time he enters the facility.

Statutory Authority G.S. 18B-207; 18B-1008.

.0236 TRANSFER OF PRODUCTS BETWEEN PREMISES PROHIBITED

A permittee owning more than one licensed retail establishment shall not transfer alcoholic beverages from one business location to another except upon written request to and approval by the Commission. No approval for such transfer will be given except upon a showing by the permittee of the following:

- (1) the establishment from which the alcoholic beverages are to be removed is going out of business or closing for such a period of time that the alcoholic beverages will spoil or deteriorate before the business reopens; or
- (2) the wholesaler assigned to the establishment to which the products will be transferred is unable or unwilling to supply the products.

This Rule shall not be construed to authorize a retail permittee to make purchases at a central location or warehouse for distribution to other retail establishments owned by the permittee.

Statutory Authority G.S. 18B-207; 18B-1006(h); 18B-1007(a).

SECTION .0400 - ADDITIONAL REQUIREMENTS FOR BROWNBAGGING PERMITTEES

.0402 PRIVATE CLUBS: POSSESSION OF ALCOHOLIC BEVERAGES

(a) Quantity. No private club brownbagging permittee shall allow a member or guest of the club to possess more than ~~four~~ five liters of spirituous ~~liquors~~ liquor or ~~four~~ five liters of fortified wine, or ~~four~~ five liters of the two combined; more than 80 liters of malt beverages (nine cases of ~~12 ounce~~ 355 milliliter cans plus nine ~~12 ounce~~ 355 milliliter cans, or seven cases of ~~16 ounce~~ 473 milliliter cans plus one ~~16 ounce~~ 473 milliliter can); or more than 20 liters of unfortified wine upon the premises.

(b) Label Required. A permittee shall ensure that each container brought onto the premises is labeled immediately with the member's name substantially as it appears on the membership roster and that containers brought by guests are labeled with the names of the guest and the sponsoring member.

(c) Possession by Permittee Not Holding Mixed Beverages Permit. A permittee not holding a Mixed Beverages Permit or his employee may maintain custody over a member's or guest's alcoholic beverages and locker key provided that during custody, the member or guest is present on the premises. The member's or guest's alcoholic beverages shall be used exclusively by the member and his bona fide guests, and the alcoholic beverage containers and locker key shall be returned to the member or guest before he leaves the premises.

(d) Furnishing Alcoholic Beverages Limited. Neither the permittee nor a member shall furnish or have furnished alcoholic beverages to other members or bona fide guests of members unless the member owning the beverages is physically present upon the premises.

Statutory Authority G.S. 18B-207; 18B-1001(7); 18B-1006(b).

.0403 PRIVATE CLUBS: STORAGE OF ALCOHOLIC BEVERAGES

(a) A private club brownbagging permittee shall see that alcoholic beverages are stored in compliance with the following conditions:

- (1) All alcoholic beverages stored at the club shall be kept in individual lockers that are labeled with the members' names as they appear on the membership roster; lockers shall remain locked when the member is not on the premises;
- (2) Each locker shall contain a lock that can be opened only with a key, and the key shall be possessed by the individual member when that member is not present on the premises of the club;
- (3) No member shall store, whether in one or more lockers, more than four five liters of fortified wine or spirituous liquor, or four five liters of the two combined; four five liters of malt beverages; or four five liters of unfortified wine upon the premises;

Note: For example, one member may store the above mentioned quantities of alcoholic beverages in the aggregate in one or more lockers, such as a beverage locker and a sports equipment locker on one premises, provided that beverage containers and lockers are labeled as required, and when he is not on the premises, the member has exclusive possession of the key or keys.

- (4) Alcoholic beverages belonging to different members shall not be stored in the same locker, except that a husband and wife may store alcoholic beverages in the same locker as long as the total quantity does not exceed the quantities stated in Subparagraph (3) of this Paragraph.
- (b) The permittee and his employee shall be responsible for returning to a member when he leaves the premises all malt beverages and unfortified wine brought to the club by the member in excess of the amounts that may be legally stored at the establishment by the member.
- (c) All alcoholic beverages left on the premises of the club contrary to the provisions of this Rule shall be destroyed by the permittee or his employee.

Statutory Authority G.S. 18B-207; 18B-301 (b) (3); 18B-1001 (7); 18B-1008.

.0406 PRIVATE CLUBS WITH BROWNBAGGING/MIXED BEVERAGES PERMITS

In a private club with both a Mixed Beverages Permit and a Brownbagging Permit, the permittee shall comply with the following requirements:

- (1) The permittee shall not allow a member to possess more than four liters of fortified wine or spirituous liquor, or four liters of the

two combined; more than 80 liters of malt beverages; or more than 20 liters of unfortified wine on the premises;

- (2) The permittee shall ensure that each container of alcoholic beverages brought onto the premises by a member is labeled immediately with the member's name substantially as it appears on the membership roster;
- (3) Neither a permittee nor a member shall furnish or have any person furnish a member's alcoholic beverage to another member or a guest of a member unless the member owning the beverage is present in the licensed premises;
- (4) Other than to label a container, or during private meetings or parties held under a Special Occasions Permit, neither a permittee nor an employee shall possess or maintain custody over a member's alcoholic beverages or member's storage locker key, whether or not the member is present on the licensed premises.

Note: This Paragraph prohibits the employees of the private club from handling a member's alcoholic beverages in any way whatsoever other than to put on the member's name label or when a private function is being held for a private group under a Special Occasions Permit, pursuant to G.S. 18B-1001(8). It is a violation of this Rule for a member's alcoholic beverages to be kept at or behind the bar where mixed beverages are prepared and sold.

Statutory Authority G.S. 18B-207; 18B-1008.

.0407 CONGRESSIONALLY CHARTERED VETERANS ORGANIZATIONS

A congressionally chartered veterans organization holding a brown-bagging permit pursuant to G.S. 18B-1001(7) may provide its members with locker storage facilities on the premises. If such a permittee provides lockers, possession and storage of alcoholic beverages shall be in compliance with the rules of this Section.

Statutory Authority G.S. 18B-207; 18B-1001(7).

SECTION .0500 - ADDITIONAL REQUIREMENTS FOR MIXED BEVERAGES PERMITTEES

.0502 PURCHASE TRANSPORTATION PERMIT /PURCHASE INVOICE FORM

- (a) A mixed beverages permittee or a designated employee shall obtain a Purchase-Transportation Permit/Invoice Form form from the ABC store designated by the local board as the place where spirituous liquors liquor will be sold to mixed beverages permittees.

PROPOSED RULES

(b) A Purchase-Transportation Permit/Invoice ~~Form~~ form, which shall be completed by the local ABC board, shall contain the following:

- (1) permittee's name;
- (2) trade name, address and telephone number of the licensed premises;
- (3) permittee's Mixed Beverages Permit number;
- (4) name and driver's license number of person or persons authorized to purchase and transport spirituous ~~liquors~~ liquor;
- (5) number and location of ABC store where purchase is to be made;
- (6) permittee's transaction or order number;
- (7) date of transaction;
- (8) destination of the spirituous ~~liquors~~ liquor which shall be the address given in Sub-paragraph (b)(2) of this Rule;
- (9) brand, quantity, size and item code number of each spirituous liquor container purchased and transported, including the serial number of each complete case or carton sold;
- (10) signatures of persons issuing and receiving permit invoice form;
- (11) regular retail price per container;
- (12) mixed beverages tax per container;
- (13) total price per container;
- (14) total cost of transaction; and
- (15) date of order, date of purchase, and expiration date.

(c) The Purchase-Transportation Permit/ Invoice ~~Form~~ form shall be retained by the permittee for three years.

Statutory Authority G.S. 18B-207; 18B-403(d); 18B-404.

.0503 PRE-ORDERS

A mixed beverages permittee shall make every effort to place orders for spirituous ~~liquors~~ liquor with the local board at least 24 hours in advance and in every case shall comply with local board policies regarding the purchase of ~~liquors~~ liquor for resale in mixed beverages.

Statutory Authority G.S. 18B-207; 18B-404.

.0510 PRICE LISTS: MISREPRESENTATION

(a) Each mixed beverages permittee shall have available for its customers a ~~printed~~ written price list containing current prices for the most common or popular mixed beverages the permittee offers for sale.

Any ~~printed~~ menu, master beverage price list or other ~~printed~~ written list that contains prices is sufficient as long as the prices listed are current and the list is readily available to the customer.

(b) Neither a mixed beverages permittee nor his employee shall misrepresent the price of any mixed beverage that is sold or offered for sale on the licensed premises.

(c) A guest room cabinet permittee shall affix to the door of every in-room bar or cabinet a complete list of the current prices of each alcoholic beverage offered for sale from the cabinet.

Statutory Authority G.S. 18B-207; 18B-1001 (12); 18B-1007 (c).

.0512 STORAGE AND DISPOSAL OF SPIRITUOUS LIQUOR CONTAINERS

(a) ~~Locked~~ Storage. All containers of alcoholic beverages possessed by a permittee for resale in mixed beverages shall be stored on the licensed premises in a separate ~~locked~~ area out of view of the patrons of the establishment, except as provided in Paragraph (b) of this Rule.

(b) Container Display. A permittee may keep at each mixing station on the premises a reasonable number of containers of each brand of spirituous liquor likely to be used at that station, but no more than one container of each brand shall be open at one station at one time. A mixing station is a counter or other place where a bartender mixes drinks to be served to patrons. Generally, each bar counter is considered a single mixing station, but a counter may contain more than one mixing station if it is so long that more than one bartender is needed to serve the patrons at that counter. In that case the counter is normally considered to have as many mixing stations as there are bartenders at that counter. Each portable bar is considered a single mixing station.

(c) Keys Required. Any lock used to secure the designated storage area shall be capable of being unlocked with a key that is available on the premises at all times.

(d) Official Inspections. The designated storage area shall be open to inspection by the Commission or law enforcement officers pursuant to G.S. 18B-502.

(e) Empty Containers. As soon as a container of spirituous liquor is empty, the permittee or his employee shall immediately and permanently deface the mixed beverages tax stamp and dispose of the bottle.

(f) Inventory Records. During the first year of operation, the ~~The~~ permittee shall maintain on a daily basis, an accurate inventory reflecting additions to and withdrawals from stock that specifies:

- (1) brand and container size of each item withdrawn;
- (2) date of withdrawal; and

- (3) date partially used containers are returned to storage.

This inventory shall be kept on a form approved by the Commission.

(g) Guest Room Cabinet Permittees. A hotel that has been issued a Guest Room Cabinet Permit may store spirituous liquor and premixed cocktails purchased for resale from guest room cabinets in the same storage area with alcoholic beverages purchased for resale in mixed beverages, as provided in Paragraph (a) of this Rule. A hotel shall not, however, place on display at mixing stations any 50 milliliter containers of liquor that were purchased for resale from cabinets. Empty or partially empty containers of alcoholic beverages purchased by a room guest from a cabinet shall be disposed of by the permittee after the room guest has checked out of the hotel.

Statutory Authority G.S. 18B-207; 18B-502; 18B-1001 (12).

.0513 PROHIBITED ACTS: HANDLING AND STORAGE OF LIQUOR

Neither a mixed beverages permittee nor his employee, whether on or off the premises, shall:

- (1) add any alcoholic beverage to any container of spirituous liquor purchased for resale in mixed beverages;
- (2) transfer from one spirituous liquor container to another or remove from any liquor container the mixed beverages tax stamp or any other stamp, label, seal or device required by law to be affixed to the container;
- (3) destroy, alter or deface the mixed beverages tax stamp or any other stamp, label, seal or device required by law to be affixed to a liquor container before the container has been emptied;
- (4) possess a counterfeit mixed beverages stamp, place a counterfeit mixed beverages stamp on any liquor container, or knowingly possess any container with a counterfeit stamp;
- (5) store any spirituous ~~liquors~~ liquor purchased for resale in mixed beverages in any place other than the approved storage area of the premises specified in the purchase-transportation permit;
- (6) place or have in the approved storage area or possess elsewhere on the licensed premises any container of spirituous liquor not bearing a mixed beverages tax stamp;
- (7) dilute or otherwise tamper with the contents of any container of alcoholic beverages;
- (8) give or sell to any patron any container of spirituous liquor that was purchased for re-

sale as mixed beverages, whether the container is full or partially full; ~~or empty;~~ provided, however, this prohibition shall not be construed to prohibit a room guest from removing from the hotel a container of alcoholic beverages purchased from a guest room cabinet;

- (9) possess any empty container of spirituous liquor purchased for resale in mixed beverages if the mixed beverages tax stamp on that container has not been permanently defaced;
- (10) possess or sell on the premises any brand of spirituous liquor that has not been approved by the Commission for sale in North Carolina or that was not purchased by the permittee pursuant to an approved special order;
- (11) purchase any spirituous ~~liquors~~ liquor for resale in mixed beverages other than as authorized by a valid purchase-transportation permit;
- (12) conceal or otherwise fail to indicate truthfully and accurately in any records required to be kept by the permittee the sale of any alcoholic beverages on the licensed premises; or
- (13) make any other incomplete, inaccurate, false or misleading statements in any report or record required by these Rules.

Statutory Authority G.S. 18B-207; 18B-404; 18B-1001(12); 18B-1007; 18B-1008.

.0514 PROHIBITED ACTS: SERVING ALCOHOLIC BEVERAGES

Neither a mixed beverages permittee nor his employee shall:

- (1) sell or allow the consumption of any mixed beverages in an area other than one specifically approved by the Commission for that purpose;
- (2) sell, offer to sell, or serve on the premises any mixed beverage by customer self-service or allow any such sale or service, except that a guest room cabinet permittee may sell alcoholic beverages from guest room cabinets as authorized by G.S. 18B-1001(12) and the rules of the Commission;
- (3) sell, offer for sale, or possess for the purpose of sale on the premises any alcoholic beverages that the permittee is not licensed to sell;
- (4) possess or consume, or allow any other person to possess or consume, on the premises any alcoholic beverages for which no permit is held if a permit is required by

law for the possession or consumption of that beverage;

- (5) misrepresent the brand of any spirituous liquor contained in any mixed beverage sold or offered for sale; or
- (6) sell or serve any brand of alcoholic beverage not identical to that ordered by the patron without first advising the patron of the difference.

Statutory Authority G.S. 18B-207; 18B-1001 (12); 18B-1006 (d).

.0515 PRIVATE CLUBS: GENERAL PROHIBITIONS: GUESTS

(a) ~~Neither a private club mixed beverages permittee nor his employee shall:~~

- (1) ~~allow any person who is not a member or a bona fide guest of a member to be present as a patron on the premises of a private club; or~~
- (2) ~~grant membership privileges to the private club to any person earlier than three days from the receipt of his application for membership.~~

(b) ~~"House" Guests. No private club mixed beverages permittee nor his employee shall admit patrons as "house" guests.~~

(c) ~~Employee Member. An employee who is also a member of a private club holding a Mixed Beverage Permit shall not admit a patron as his guest while that employee is on duty.~~

(d) ~~A member shall designate his own guest. If a member accepts a patron as his guest at the behest of the private club mixed beverages permittee or employee, then the Commission shall consider that member to be acting as the permittee's agent.~~

Statutory Authority G.S. 18B-207; 18B-1008.

.0516 PRIVATE CLUBS: MEMBERS' LIQUOR KEPT SEPARATE

In a private club with both a Mixed Beverages Permit and a Brownbagging Permit, the permittee shall comply with the following requirements:

- (1) The permittee shall not allow a member or guest to possess on the premises more than ~~four~~ five liters of fortified wine or spirituous liquor, or ~~four~~ five liters of the two combined, or more than 80 liters of malt beverages ~~or more than 20 liters of unfortified wine on the premises; other than draft malt beverages in kegs;~~
- (2) The permittee shall ensure that each container of alcoholic beverages brought onto the premises by a member or guest is labeled

immediately with the member's name ~~substantially as it appears on the membership roster; or the guest's and sponsoring member's names;~~

- (3) Neither a permittee nor a member shall furnish or have any person furnish a member's alcoholic beverages to another member or a guest of a member unless the member owning the beverage is present on the licensed premises;

- (4) Other than to label a container, or during private meetings or parties held under a ~~Special Occasions Occasion~~ Permit, neither a permittee nor an employee shall possess or maintain custody over a member's alcoholic beverages or a member's storage ~~lock~~ locker key, whether or not the member is present on the licensed premises.

Note: This Paragraph prohibits the employees of the private club from handling a member's alcoholic beverages in any way whatsoever other than to put on the member's name label or when a private function is being held for a private group under a ~~Special Occasions Occasion~~ Permit, pursuant to G.S. 18B-1001(8). It is a violation of this Rule for a member's alcoholic beverages to be kept at or behind the bar where mixed beverages are prepared and sold.

Statutory Authority G.S. 18B-207; 18B-1006(b); 18B-1008.

.0518 PRIVATE CLUBS: FINANCIAL STATEMENTS: RECORD KEEPING

(a) A private club holding a Mixed Beverages Permit shall maintain full and accurate monthly records of its finances, separately indicating each of the following:

- (1) amounts expended for the ~~purpose~~ purchase of spirituous liquor from ABC stores and the quantity of spirituous liquor purchased;
- (2) amounts collected from the sale of mixed beverages and, by brand and container size, the quantity of spirituous liquor sold;
- (3) amounts received in payment of members' dues;
- (4) amounts received from charges to members and guests of members;
- (5) quantity of spirituous liquor, by brand and container size, that was not sold but is no longer on the licensed premises due to stated reasons, such as breakage or theft.

(b) Records of purchases of spirituous liquor and sales of mixed beverages shall be filed separate and apart from all other records maintained on the premises.

(c) Records, including original invoices for the items in Paragraph (a) of this Rule, shall be maintained on the premises for three years and shall be open for inspection or audit pursuant to G.S. 18B-502.

(d) A private club holding a Mixed Beverages Permit shall submit to the Commission for its review, on forms provided by the Commission, regular reports summarizing the information required to be maintained by this Rule. These reports shall be submitted on a quarterly basis during the first year of operation as a licensed premises and, thereafter, on an annual basis or on a schedule set by the Commission.

Statutory Authority G.S. 18B-207; 18B-1008.

.0519 RESTAURANTS: INCOME FROM SALES

(a) For the purposes of further defining a restaurant, as provided in G.S. 18B-1000(6), the term "substantially engaged in the business of preparing and serving meals" means that more than fifty percent of the establishment's food and beverage sales are from the sale of food and non-alcoholic beverages.

(b) In determining what portions of sales can be attributed to the sale of food and non-alcoholic beverages, ~~all food and beverage sales may be included except:~~ the following sales may be included:

- ~~(1) mixed beverages, including the mixer; and~~
- ~~(2) any other alcoholic beverages (malt beverages, unfortified wines and fortified wines).~~

- (1) food prepared in the permittee's kitchen and served as a meal to be consumed on the premises or as a "take-out" order;
- (2) prepackaged food sold to accompany the meal;
- (3) non-alcoholic beverages sold to accompany the meal.

(c) In determining what portions of sales can be attributed to the sale of food and non-alcoholic beverages, the following items may not be included:

- (1) mixed beverages, including the mixer;
- (2) any other alcoholic beverages;
- (3) grocery items not ordered and purchased with meals;
- (4) cover charges.

Statutory Authority G.S. 18B-207; 18B-1000(6); 18B-1008.

.0520 RESTAURANTS, HOTELS, AND TOUR BOATS: RECORD KEEPING

(a) Monthly Records. Restaurants, ~~and~~ hotels ~~with restaurants and tour boats~~ holding Mixed

Beverages Permits shall maintain full and accurate monthly records of their finances, separately indicating each of the following:

- (1) amounts expended for the purchase of spirituous liquor from ABC stores and the quantity of spirituous liquor purchased;
- (2) amounts collected from the sale of mixed beverages and, by brand and container size, the quantity of spirituous liquor sold;
- (3) if a guest room cabinet permittee, the amounts collected from the sale of liquor from guest room cabinets, and by container size, the quantity of liquor sold from cabinets;
- (4) ~~(3)~~ the quantity of spirituous liquors, liquor, by brand and container size, that was not sold but is no longer on the premises due to stated reasons, such as breakage or theft;
- (5) ~~(4)~~ if a restaurant or tour boat, amounts collected from the sale of:
 - (A) food and non-alcoholic beverages;
 - (B) items other than food and beverages of all kinds; and
 - (C) malt beverages, unfortified wine and fortified wines, wine;
- (6) ~~(5)~~ if a hotel, amounts collected from:
 - (A) furnishing lodging;
 - (B) sale of meals;
 - (C) sale of malt beverages, unfortified wine and fortified wine; and
 - (D) amounts collected from all other sources.

(b) Segregation of Records. Records of purchases of spirituous liquors liquor and sales of alcoholic beverages shall be filed separate and apart from all other records maintained on the premises.

(c) Retention and Inspection of Records. Records, including original invoices related to alcoholic beverages and mixed beverages, shall be maintained on the premises for three years and shall be open for inspection or audit pursuant to G.S. 18B-502.

(d) Submission of Financial Records. A restaurant, tour boat, or a hotel ~~with a restaurant~~ holding a Mixed Beverages Permit shall submit to the Commission for its review, on forms provided by the Commission, regular reports summarizing the information required to be maintained by this Rule. These reports shall be submitted on a quarterly basis during the first year of operation as a licensed premises, and thereafter, on an annual basis or on a schedule set by the Commission.

Statutory Authority G.S. 18B-207; 18B-1006(i); 18B-1008.

.0523 HOTELS: INCOME FROM SALES

For the purpose of defining a hotel, the term "substantially engaged in the business of furnishing lodging" in G.S. 18B-1000(4) means that the establishment's gross receipts from the rental of lodging rooms, sale of food, and sale of non-alcoholic beverages are greater than its gross receipts from the sale of alcoholic beverages.

Statutory Authority G.S. 18B-1000(4); 18B-1008.

.0524 GUEST ROOM CABINET PERMITTEES: PURCHASES OF LIQUOR

(a) Ordering Liquor. A guest room cabinet permittee shall comply with Rule .0503 of this Section and place orders for liquor to be sold from guest room cabinets in accordance with the local board's rules and the following additional conditions:

(1) Orders for liquor to be sold from cabinets shall be placed separately from orders for liquor to be resold in mixed beverages;

(2) Liquor may be purchased for resale from cabinets in 50 milliliter sizes only; pre-mixed cocktails purchased for resale from cabinets may be purchased in 375 milliliter sizes only.

(b) Mixed Beverages Surcharge Stamps. A guest room cabinet permittee who receives unaffixed stamps from a local board shall immediately affix one stamp to each container of liquor before the container is logged into the permittee's inventory. Errors in receiving incorrect numbers of stamps or containers from local board personnel shall be the responsibility of the permittee at the time of purchase.

Statutory Authority G.S. 18B-207; 18B-404(d); 18B-1001(12).

.0525 GUEST ROOM CABINETS; INVENTORY AND RECORDS

A guest room cabinet permittee shall maintain on the premises complete and accurate inventory and sales records of all liquor purchased for resale in cabinets in accordance with the following requirements:

(1) During the first year of operation with a Guest Room Cabinet permit, inventory records for guest room cabinet liquor shall be maintained as required by Rule .0512(f)(1) and (2) of this Section.

(2) Sales records of guest room cabinet liquor shall be kept on a monthly basis in accordance with the requirements of Rule .0520 of this Section.

(3) Purchase-transportation permits for liquor to be sold from guest room cabinets shall be maintained by the permittee on the premises for a period of three years.

Statutory Authority G.S. 18B-207; 18B-1001(12).

.0526 GUEST ROOM CABINETS; SALES OF ALCOHOLIC BEVERAGES

(a) Restrictions on 50 Milliliter Containers. A guest room cabinet permittee shall not display or sell any 50 milliliter container of liquor on any part of the hotel premises other than in guest room cabinets installed in guest rooms.

(b) Cabinet Locks and Keys. A guest room cabinet shall contain a lock which may be opened only with a key that is separate from the hotel room key. Electronically operated locking systems for guest room cabinets may be installed by a permittee upon written approval of the Commission when it has been shown that the electronic locking system contains adequate safeguards against underage persons being able to obtain alcoholic beverages from guest room cabinets.

(c) Lodging Guests. No guest room cabinet permittee or his employee shall give a guest room cabinet key to any person under 21 years of age. No lodging guest shall be required to accept a guest room cabinet key if the guest does not wish to have a key.

(d) Price List. Every guest room cabinet installed by a permittee shall have firmly affixed to the door of the cabinet a complete list of all alcoholic beverages offered for sale from the cabinet and the current price of each alcoholic beverage.

(e) Notice of Age Requirement. In addition to the price list required in Paragraph (d) of this Rule, each guest room cabinet shall contain a notice to guests that reads as follows: "IT IS UNLAWFUL IN NORTH CAROLINA FOR ANY PERSON TO GIVE ALCOHOLIC BEVERAGES TO ANY PERSON UNDER 21 YEARS OF AGE. G.S. 18B-302."

Statutory Authority G.S. 18B-207; 18B-302(a); 18B-404(d); 18B-1001(12).

.0527 GUEST ROOMS CONSIDERED RESIDENCE

(a) Law Enforcement Jurisdiction. A hotel room is considered a place of temporary residence and not part of the permittee's retail licensed premises. Therefore, when a hotel room has been rented to a lodging guest, entrance by a law enforcement officer into the guest room is governed by the same laws as entry into any res-

idence, notwithstanding the fact that the hotel has installed a guest room cabinet in the room.

For the purposes of enforcing the ABC laws related to guest room cabinets, a permittee shall allow Alcohol Law Enforcement agents, local ABC officers and employees of the Commission reasonable access to guest rooms that are not rented to a lodging guest at the time of the inspection.

(b) Certain Restrictions Not Applicable to Guest Room Cabinet Sales. Because a rented hotel room is considered a temporary residence, the rooms are not considered part of the permittee's retail licensed premises. Therefore, statutes and rules regulating such areas as hours of sale, "happy hours," and advertising are not applicable to sales of alcoholic beverages from hotel cabinets.

Statutory Authority G.S. 18B-207; 18B-301(a); 18B-502; 18B-1001(12).

.0528 MIXED BEVERAGES CATERING PERMITS: GENERAL

(a) Liquor Purchases. Liquor catered by a mixed beverages permittee shall be purchased by the permittee from the mixed beverages store operated by the local ABC board for the jurisdiction in which the restaurant or hotel is issued a Mixed Beverages permit. A hotel or restaurant with a Mixed Beverages Catering permit shall not cater any liquor on which the mixed beverages surcharge imposed by G.S. 18B-804(b)(8) has not been paid.

(b) Cash Bars Prohibited. The Mixed Beverages Catering permit does not authorize the sale of individual mixed beverages at a catered event. Therefore, no mixed beverages catering permittee shall set up a cash bar for beer, wine or mixed beverages at any place other than on the licensed premises of the hotel or restaurant.

(c) Food Required. A mixed beverages catering permittee who is catering liquor at an event held off the licensed premises of the hotel or restaurant shall also cater food at that event.

(d) Intent of Rules. Nothing in the provisions of the rules of the Commission shall be construed to allow a mixed beverages catering permittee to contract with the holder of a Special Occasions or Brownbagging permit to serve or sell mixed beverages to the patrons of that permittee's business for a function to be held at the location for which those permits were issued.

Statutory Authority G.S. 18B-203 (a) (1); 18B-207; 18B-1001(13); 18B-1007(a); 18B-1008.

.0529 MIXED BEVERAGES CATERING PERMITS IN "DRY AREAS"

(a) Definitions. For purposes of this Rule, the following definitions shall apply:

(1) "Dry area" means a jurisdiction in which the sale of mixed beverages has not been approved in an election held pursuant to G.S. 18B-600 or by any other provision of the ABC laws.

(2) "Private function" means an unadvertised event for which the host has issued personal invitations. Events for which invitations are issued by radio, television, newspaper, circular or fliers to the general public shall not be construed as "private."

(b) Restrictions. In addition to the guidelines in Rule .0528 of this Section, the following additional restrictions shall apply to all events being catered in areas in which the sale of mixed beverages is not lawful:

(1) Liquor may be catered at political or charitable events held to allow a non-profit or political organization to raise funds where the host organization has obtained a Special One-Time permit pursuant to G.S. 18B-1002(5) authorizing the serving of mixed beverages to persons attending the event. These fund-raising events may be private or open to the public, and may be held on private, commercial, or government owned property.

(2) Liquor may be catered at any private function held on the premises of a business that holds a Special Occasion permit, or for a person who has obtained a Limited Special Occasion permit only if:

(A) the host is not a permittee who has been issued a Special Occasion permit pursuant to G.S. 18B-1001(8); and

(B) there is no admission charged to those attending.

(3) Liquor may be catered at any private function held on private residential or non-commercial property so long as no admission is charged to those attending.

Statutory Authority G.S. 18B-203(a); 18B-207; 18B-301 (a), (c); 18B-603; 18B-1001; 18B-1001 (13); 18B-1002 (5).

SECTION .0600 - SPECIAL REQUIREMENTS FOR CONVENTION CENTERS, COMMUNITY THEATRES, SPORTS CLUBS, AND NONPROFIT AND POLITICAL ORGANIZATIONS

.0601 CONVENTION CENTERS: GENERAL REQUIREMENT

(a) **Definition.** As used in this Section, the term "convention center" means civic centers, armories, auditoriums, and coliseums.

(b) **Sales.** A convention center desiring to sell malt beverages, wine or mixed beverages to convention groups or similar large gatherings shall apply for and obtain the appropriate on-premises retail sales permits.

(c) **Special Occasions.** Convention centers shall obtain an annual Special Occasions Permit or require a lessee to obtain a limited Special Occasions Permit or Special One-time Brownbagging Permit before allowing any person to possess and consume fortified wine or spirituous liquor on any part of its premises.

Statutory Authority G.S. 18B-207; 18B-900(e); 18B-1000(1a).

.0603 CONVENTION CENTERS: CATERER MAY PERFORM ACTIVITIES

The Commission may allow a convention center's independent catering contractor to engage in all the activities authorized by the permits issued to the convention center. Any caterer so contracted shall meet all requirements for applicants as prescribed in G.S. 18B-900(a) and (b). Ultimate responsibility for violations of the ABC laws shall rest in the owner or operator of the convention center.

Statutory Authority G.S. 18B-207; 18B-900(e).

.0605 CONVENTION CENTERS: MIXED BEVERAGE RECORDS

(a) In lieu of the requirements set forth in Rules .0518 and .0520 of this Subchapter regarding record keeping, a convention center holding a Mixed Beverages Permit shall maintain full and accurate monthly records of its finances, separately indicating each of the following:

- (1) amounts expended for the purchase of spirituous liquor from ABC stores and the quantity of liquor purchased;
- (2) amounts collected from the sale of mixed beverages, and, by brand and container size, the quantity of spirituous liquor sold;
- (3) quantity of spirituous liquor, by brand and container size, that was not sold but is no longer on the licensed premises due to stated reasons, such as breakage or theft.

(b) **Maintaining Records.** Records of purchases of spirituous liquor and sales of mixed beverages shall be filed separate and apart from all other records, and the records, including original invoices, shall be kept on the premises at all times for a period of three years.

Statutory Authority G.S. 18B-207; 18B-1008.

.0606 COMMUNITY THEATRES: SALES

A community theatre desiring to sell malt beverages, wine, or mixed beverages shall apply for and obtain the appropriate on-premises retail sale permits.

Statutory Authority G.S. 18B-207; 18B-1000(1).

.0607 COMMUNITY THEATRES: QUALIFICATIONS

The Commission may investigate each community theatre applicant to ensure that it is non-profit and that its sole business is sponsoring or presenting theatrical events to the public.

Statutory Authority G.S. 18B-207; 18B-1000(1).

.0608 COMMUNITY THEATRES: WHEN PERMITS VALID

Permits issued to community theatres are valid only during regularly scheduled theatrical events sponsored by the applicant. The Commission may determine, based on calendars of events and other evidence, which events are regularly scheduled.

Statutory Authority G.S. 18B-207; 18B-1000(1).

.0609 COOKING SCHOOLS: SALES

A cooking school desiring to sell unfortified wine or to use liquor or fortified wine for culinary purposes shall apply for and obtain the appropriate permits.

Statutory Authority G.S. 18B-207; 18B-1000(1b).

.0610 COOKING SCHOOLS: QUALIFICATIONS

The Commission may investigate each cooking school applicant to ensure that it is a bona fide school that is substantially engaged in teaching cooking techniques. The school shall charge a fee for its courses.

Statutory Authority G.S. 18B-207; 18B-1000(1b).

.0611 COOKING SCHOOLS: SALES RESTRICTED TO STUDENTS

A cooking school shall not sell food or alcoholic beverages to any person other than its bona fide students.

Statutory Authority G.S. 18B-207; 18B-1006(g).

.0612 RECORD KEEPING

(a) Convention centers, community theatres, sports clubs, nonprofit and political organiza-

tions holding Mixed Beverages permits shall maintain full and accurate monthly records of their finances, separately indicating each of the following:

- (1) amounts expended for the purchase of spirituous liquor from ABC stores and the quantity of spirituous liquor purchased;
- (2) amounts collected from the sale of mixed beverages and, by brand and container size, the quantity of spirituous liquor sold;
- (3) the quantity of spirituous liquor, by brand and container size, that was not sold but is no longer on the premises due to stated reasons, such as breakage or theft.

(b) Segregation of Records. Records of purchases of spirituous liquor and sales of alcoholic beverages shall be filed separate and apart from all other records maintained on the premises.

(c) Retention and Inspection of Records. Records, including original invoices related to alcoholic beverages and mixed beverages, shall be maintained on the premises for three years and shall be open for inspection or audit pursuant to G.S. 18B-502.

(d) Submission of Financial Records. A permittee holding a Mixed Beverages permit under this Rule shall submit to the Commission for its review, on forms provided by the Commission, regular reports summarizing the information required to be maintained by the rule. These reports shall be submitted on a quarterly basis during the first year of operation as a licensed premises, and thereafter, on an annual basis or on a schedule set by the Commission.

Statutory Authority G.S. 18B-207; 18B-1007.

SECTION .0700 - SPECIAL OCCASIONS PERMITS

.0703 STORAGE OF ALCOHOLIC BEVERAGES

(a) Annual Special Occasions Permit; Storage. Except as provided in Paragraph (b) of this Rule, a special occasions permittee shall not provide storage for alcoholic beverages except during preparation for or during the time a special occasion is taking place. The host, however, does have a reasonable time to remove leftover alcoholic beverages. This Rule shall not be construed to prohibit a mixed beverages permittee from storing alcoholic beverages purchased for resale in mixed beverages as required by Section .0500 of this Subchapter.

(b) Limited Special Occasions Permit; Storage. The holder of a Limited Special Occasions Permit who also possesses a Purchase-Transportation Permit issued pursuant to G.S. 18B-103(g) may store alcoholic beverages on the

premises of a commercial establishment for 48 hours before and 48 hours after the function as long as the beverages are stored in a secure area and are not stored in a mixed beverage permittee's locked storage area.

Alcoholic beverages possessed under a Special Occasion Permit or a Limited Special Occasion Permit may be stored on the premises covered by the permit in accordance with G.S. 18B-403(g), as long as the beverages are stored in a secure area and are not stored in a mixed beverage permittee's storage area or commingled with the mixed beverages inventory.

Statutory Authority G.S. 18B-207; 18B-403(g); 18B-1001(8),(9).

.0704 NOTICE TO BE POSTED

When a private function is being held under an annual a Special Occasion Permit or Limited Special Occasions Occasion Permit, the permittee shall post a notice certifying that a private function is being held. The notice shall be posted in that area of the establishment in which alcoholic beverages are being consumed or possessed.

Statutory Authority G.S. 18B-207.

.0705 NO PERMIT REQUIRED AT APARTMENT CLUBHOUSE

A Special Occasions Occasion Permit is not required of club rooms or social centers that are provided by apartment complexes or multiple family housing projects for use by residents and their guests for parties, meetings or other social events as long as no more than a nominal fee is charged to cover additional or special janitorial services. In those instances the club rooms or social centers shall be considered a reasonable extension of the residents' private residences, and no Special Occasions Occasion Permit is required. A club room or social center shall be considered a commercial establishment for which a Special Occasions Occasion Permit is required if the club room or social center:

- (1) is rented to nonresidents of the multiple family housing complex;
- (2) is rented to residents for a charge in excess of that reasonably calculated to cover additional or special janitorial services; or
- (3) holds a retail Malt Beverage, Unfortified Wine, Fortified Wine, or Mixed Beverages Permit.

Statutory Authority G.S. 18B-207; 18B-301(c).

.0706 WHEN PERMITS INVALID: MIXED BEVERAGE SALES

PROPOSED RULES

When mixed beverages are being sold in a private dining area, any other private area, or when the entire premises is being used for a private function, any Special ~~Occasions~~ Occasion Permit that would otherwise be applicable to the premises or area of the premises is invalid for that period, and no person shall possess any spirituous liquor at that private function other than the permittee and his employees.

Statutory Authority G.S. 18B-207; 18B-1008.

.0707 DESTRUCTION OF LEFTOVER BEVERAGES

The owner or operator of a commercial establishment holding ~~an annual~~ a Special ~~Occasions~~ Occasion Permit shall destroy all ~~unfortified wine~~, fortified wine and spirituous liquor left on the premises by the host of a private function more than 48 hours after the conclusion of the function.

Statutory Authority G.S. 18B-207; 18B-403(g); 18B-1001(8).

.0708 TYPES OF PERMITS REQUIRED

The owner or operator of any commercial facility or commercial establishment renting or furnishing the premises thereof for a private function where the host of the function will possess more than five liters of fortified wine or spirituous liquor, or five liters of the two combined, shall either:

- (1) apply for and obtain a Special Occasion Permit, as required by G.S. 18B-1001(8) and G.S. 18B-902; or
- (2) require the person in charge of the private function to apply for and obtain a Limited Special Occasion Permit under the provisions of G.S. 18B-1001(9) and 18B-902.

Statutory Authority G.S. 18B-207; 18B-301 (c); 18B-1001 (8), (9).

SECTION .0800 - CULINARY PERMITS

.0801 GENERAL REQUIREMENTS

(a) In addition to the general requirements for restaurants and hotels as defined in G.S. 18B-1000, a person operating a restaurant, hotel or catering service shall also meet the following minimum standards to qualify for a Culinary Permit:

- (1) The business does not hold a Mixed Beverages Permit issued pursuant to G.S. 18B-1004 (10);
- (2) Foods in which wine and liquor are used shall be served regularly;

(3) All wine and liquor shall be obtained from a lawful source within this State; and

(4) The business has a dish or dishes listed on its menu, the recipe for which utilizes wine or liquor in the preparation.

(b) In addition to the general requirements for cooking schools as defined in G.S. 18B-1000, a person operating such a school shall meet the requirements of Subparagraphs (a)(1) and (3) of this Rule.

(c) Any restaurant or hotel with a Mixed Beverages Permit may use for culinary purposes any fortified wine or spirituous liquor it has purchased for resale in mixed beverages.

In addition to the general requirements for restaurants, hotels and cooking schools in G.S. 18B-1000 and the Rules of the Commission, a restaurant, hotel, cooking school or catering service using fortified wine or spirituous liquor for culinary purposes shall obtain those alcoholic beverages from a lawful source within this State.

Statutory Authority G.S. 18B-207; 18B-1000 (1b), (4), (6); 18B-1001 (11); 18B-1006 (h).

.0802 POSSESSION AND STORAGE OF WINE AND LIQUOR

(a) A restaurant, hotel, cooking school, or catering service may legally possess for culinary purposes up to 12 liters of fortified wine or spirituous liquor, or 12 liters of the two combined, at its business location (or at the cooking site when the permittee is a catering service).

(b) The restaurant, hotel, cooking school, or catering service permittee shall destroy all wine or liquor left on the premises contrary to the provisions of this Section.

Statutory Authority G.S. 18B-207; 18B-1001(11).

.0803 RECORDS REQUIRED

The permittee shall retain all original receipts and records of fortified wine or spirituous liquor purchased for culinary purposes during the previous three year period, and those records and receipts shall be available for inspection.

Statutory Authority G.S. 18B-207; 18B-502; 18B-1001(11).

.0804 USE OF WINE AND LIQUOR

(a) In preparing foods that require some degree of alcoholic seasoning, alcoholic content of the food shall not exceed 20 percent of the total food volume. In preparing sauces requiring alcoholic beverages, alcoholic content shall not exceed 50 percent of the total volume of the sauce.

(b) A monthly inventory shall be made of fortified wine and spirituous liquor used for culinary purposes and shall be available for inspection.

(c) All fortified wine and spirituous liquor, when not in use, shall be inconspicuously stored in the kitchen area.

(d) Fortified wine and spirituous liquor used for culinary purposes are allowed in the service area of the restaurant only when a particular food requiring that wine or liquor is being prepared or served.

Statutory Authority G.S. 18B-207; 18B-1001(11).

SECTION .0900 - WINE AND BEER TASTINGS

.0902 TASTINGS HELD BY INDUSTRY MEMBERS FOR NON-PERMITTEES

Where the legal sale of those beverages is permitted, an industry member may furnish wine or malt beverages for tastings to persons who do not hold ABC permits, for consumers provided that:

- (1) The tasting is conducted for promotional purposes;
- (2) No alcoholic beverages are sold, no sales or orders are solicited, and no order blanks are placed in or about the premises;
- (3) ~~The tasting is not held on the premises of a retail ABC permittee.~~ If the tasting is held on the premises of a retail permittee, the industry member may purchase the products to be used from the retailer so long as the purchase price is no higher than the retailer's ordinary retail price;
- (4) If wine or beer is furnished by the industry member for a consumer tasting held in conjunction with a retailer, any excess brought to the tasting is removed by the industry member; and
- (5) If a tasting is conducted in conjunction with a retailer, the industry member makes no payment to or on behalf of the retailer for promoting and advertising the tasting.

Statutory Authority G.S. 18B-207; 18B-1107 (a) (4); 18B-1109 (a) (4); 18B-1116 (b).

.0903 TASTINGS HELD BY INDUSTRY MEMBERS FOR RETAILERS: SAMPLES

(a) Samples. An industry member may give samples of wine or malt beverages to a retail permittee authorized to sell that beverage under the following circumstances:

- (1) The industry member may give the retailer one bottle or can of each newly listed product he offers for sale; up to three gallons per brand of malt beverages and up to three liters per brand of wine; and

(2) The retailer has not previously purchased those brands from the industry member.

(b) ~~(2) Tastings.~~ The industry member may give the retailer samples by the glass of any products he offers for sale. Such a tasting may be conducted on the industry member's premises or at any other location approved by the Commission for that purpose. A tasting under this Paragraph shall not be conducted in conjunction with a meal, a party, or any other social event but shall be for business purposes only.

Statutory Authority G.S. 18B-207; 18B-1107 (a) (4); 18B-1109 (a) (4); 18B-1116 (b).

SECTION .1000 - ADVERTISING

.1001 DEFINITIONS

As used in this Section:

- (1) The terms defined in G.S. Chapter 18B and Subchapters 2R through 2T of this Chapter shall have the same meaning when used in this Section.
- (2) "Advertising" means the publicizing of the trade name of a permittee, in connection with or relating to alcoholic beverages or the publicizing of alcoholic beverages by brand name, manufacturer's name or by other reference and shall include any display intended to attract attention by a combination of letters, pictures, objects, lighting effects, illustrations, etc., except that such term shall not include:
 - (a) any label affixed to any container of alcoholic beverages or any individual covering, carton or other wrapper of the container; or
 - (b) any editorial for which no money or other valuable consideration is paid or promised, directly or indirectly, by any person subject to these Rules.
- (3) "Cooperative advertising" means any joint effort between permittees occupying a vertical relationship to each other to advertise alcoholic beverages, the retailer's business, or any promotion as defined in 4 NCAC 2T .0702(3) of this Chapter. Cooperative advertising, however, shall not be construed to include point-of-sale advertising furnished by a ~~manufacturer, wholesaler or importer~~ an industry member.
- (4) "Direct Mail" means any advertising material mailed via any class of postal service to a consumer.
- (5) ~~(4)~~ "Display" means the exhibition of alcoholic beverage containers in cases, or bottles or cans outside of cases, together with advertising material, the purpose of which is to

advertise those products to prospective purchasers on the premises.

- (6) (5) "Case display" means alcoholic beverages in cartons or cases only. A handypack is included in the term "carton."
- (7) (6) "Magazine" means any trade, fraternal or scientific periodical or a periodical having general circulation and containing descriptive matter, articles and stories, and designed primarily for the edification and entertainment of the reader that is published no less frequently than once each quarter.
- (8) (7) "Newspaper" means any paper published more frequently than once monthly. ~~and having a paid circulation.~~
- (9) (8) "Point-of-Sale" means advertising that is located inside and on the premises where the product is displayed or sold. Point-of-sale materials do not include consumer or retailer specialty items or novelties.

Statutory Authority G.S. 18B-105(b).

.1004 GENERAL PROVISIONS

(a) ~~No permittee, directly, indirectly or through an affiliate, shall publish, disseminate or broadcast or cause to be published, disseminated or broadcast in any newspaper, free newspaper, magazine, shopping guide or similar publication or any medium of advertising, any advertisement of alcoholic beverages unless that advertisement is in conformity with these Rules.~~

(b) ~~Advertising.~~ It is the policy of the Commission that these Rules shall apply to all advertising media engaged in interstate or intrastate commerce.

(c) ~~Advertising Permitted Under Conditions Specified.~~ Advertising will be permitted through the media of newspapers, magazines, billboards, signs, radio and television, or as otherwise specifically provided or approved by the Commission and then under the conditions set out in this Rule. The Commission does not waive the discretion conferred upon it under G.S. 18B-105 to prohibit any advertising that it considers objectionable or contrary to public interest.

(d) ~~No person shall originate advertising in this State dealing with alcoholic beverages by any means including newspapers, radio, television, circulars, signs, billboards, displays or any other advertising media, unless such advertisement is in conformity with all provisions of these Rules.~~

(e) ~~All alcoholic beverages advertising or any claims for alcoholic beverages advertising shall conform with the standards set forth in regulations under the provisions of the Federal Alcoholic Administration Act except where they conflict with the rules of the Commission.~~

(a) Compliance with Rules. No permittee or affiliate shall publish, disseminate or broadcast, or cause to be published, disseminated or broadcast, any advertisement, either directly or indirectly, by newspaper, magazine, shopping guide, sign, circular, direct mail, billboard, display, radio, television or other advertising medium unless the advertisement is in conformity with all the rules of the Commission. This requirement shall apply to any alcoholic beverage advertising, whether or not it originates within this state. In addition, the Commission does not hereby waive the discretion conferred upon it under G.S. 18B-105 to prohibit any advertising that it considers objectionable or contrary to public interest.

(b) Trade Practice Section Applies. In addition to the rules in this Section, industry members shall comply with the trade practice and advertising requirements of Section .0700 of Subchapter 21 of this Chapter in their dealings with retailers and special one-time permittees.

(c) Approval of Advertising Not Authorized. Upon request and for good cause shown, the Commission may authorize a form of advertising not specifically allowed or authorized by these Rules.

(d) (4) Limited to Brands Listed. Advertisements of alcoholic beverages shall be limited to the brands actually approved and listed by the Commission at the time the advertisements appear.

(e) (g) Telephone Directory Listings. Permittees may insert telephone and city directory listings if the listings conform in copy to the restrictions enumerated in these Rules.

(f) (h) Advertising within Transportation Terminals. Upon application, the Commission may allow a permittee to advertise alcoholic beverages within transportation terminals by displays or otherwise.

(g) (i) Exchange of Advertising by Permittee. Any retail permittee of the Commission may give to any other retail permittee of the Commission any advertising matter that has no use other than advertising material if it meets the requirements of these Rules.

Statutory Authority G.S. 18B-105(b).

.1005 PROHIBITED STATEMENTS IN ADVERTISING OR ON LABELS

(a) General Restrictions. An advertisement or product label shall not contain:

- (1) any statement, design, device or representation that is false or misleading in any material particular;

- (2) any statement that is disparaging of a competitor's products;
 - (3) any statement, design, device or representation which depicts nudity or is obscene or indecent;
 - (4) any statement, design, device or representation of or relating to analysis, standards or tests, irrespective of falsity, which is likely to mislead the consumer;
 - (5) any statement, design, device or representation of or relating to any guaranty, irrespective of falsity, which is likely to mislead the consumer. Nothing in this Section shall prohibit the use of an enforceable guaranty in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package";
 - (6) any statement that the product is produced, blended, made, bottled, packed or sold under or in accordance with any authorization, law or regulation of any municipality, county or state, federal or foreign government, unless such statement is required or specifically authorized by the laws or regulations of such government; and if a municipal, county, state or federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto;
 - (7) any statement, picture or illustration implying that the consumption of alcoholic beverages enhances athletic prowess, or any statement, picture or illustration referring to any known athlete, if such statement, picture or illustration implies, or if the reader may reasonably infer, that the use of this product contributed to such athlete's athletic achievements;
 - (8) any picture or illustration depicting the use of alcoholic beverages in a scene which is undignified, immodest or in bad taste;
 - (9) any offer of a prize or award upon the completion of any contest in which there is a requirement to purchase the advertised product, provided that, no advertisement shall promote a game of chance or a lottery; ~~or the awarding of prizes or premiums;~~
 - (10) any subject matter or illustrations inducing ~~minors~~ persons under 21 years of age to drink;
 - (11) any statement, picture or illustration inconsistent with the spirit of safety or safe driving programs;
 - (12) any scene that would be contrary to state laws and rules governing sale, storage and consumption of alcoholic beverages;
 - (13) any statement concerning a brand that is inconsistent with any statement on the labeling thereof;
 - (14) any statement, design or device representing that the use of a brand has curative or therapeutic effects, if such statement is untrue in any particular, or tends to create a misleading impression;
 - (15) any statement or representation that the product was manufactured in or imported from a place or country other than that of the actual origin, or was produced or processed by one who was not in fact the actual producer or processor;
 - (16) any statement, design, device or pictorial representation of or relating to or capable of being construed as relating to the armed forces of the United States or the American Flag, state flag, or any emblem, seal, insignia or decoration associated with any such flag of armed forces of the United States; nor shall any advertisement contain any statement, device, design or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer into believing that the product has been endorsed, made or used by, produced for or under the supervision of or in accordance with the specifications of the government, organizations, family or individual with whom the flag, seal, coat of arms, crest or insignia is associated; or
 - (17) words such as "high test," "high proof," "full strength," "extra strong," or similar descriptive terms, or direct or indirect references to the intoxicating effect of the product.
- (b) Prohibited Statements in Regard to Wine. In addition to the applicable prohibited statements as set forth in Paragraph (a) of this Rule, an advertisement or label for wine shall not contain:
- (1) any statement of bonded wincellar and bonded winery numbers unless stated in direct conjunction with the name and address of the person operating such winery or storeroom. Statement of bonded wincellar and bonded winery numbers may be made in the following form:
 "Bonded Wincellar No. __," "B.W.C. No. __."
 "Bonded Winery No. __," "B.W. No. __."

No additional reference thereto shall be made, nor shall any use be made of such statement that may convey the impression that the wine has been made or matured under United States Government or any state government supervision or in accordance with United States Government or any state government specifications or standards;

- (2) any statement, design or representation which relates to alcoholic content or which tends to create the impression that a wine is "unfortified" or has been "fortified" or has intoxicating qualities, or contains spirituous ~~liquors~~ liquor (except for a reference to spirituous ~~liquors~~ liquor in a statement of composition where such statement is required by these ~~Regulations~~ Rules to appear as part of the designation of the product); or
- (3) statement of age or dates, or any statement of age or representation relative to age (including words or devices in any brand name or trademark), except that:
 - (A) In the case of vintage wine, the year of vintage may be stated if it appears on the label; or
 - (B) Truthful references of a general and informative nature relating to methods of production involving storage or aging, such as "This wine has been mellowed in oak casks," "Stored in small barrels" or "Matured at regulated temperatures in our cellars" may be made.

The statement of any bottling date shall not be deemed to be representation relative to age, if such statement appears without undue emphasis in the following form: "Bottled in ____" (inserting the year in which the wine was bottled). No date, except as provided in this Section with respect to statement of vintage year and bottling date, shall be stated unless, in addition thereto and in direct conjunction therewith, in the same size and kind of printing there shall be stated an explanation of the significance of such date. Provided, that if any date refers to the date of establishment of any business, firm or corporation such date shall be stated without undue emphasis and in direct conjunction with the name of the person, firm or corporation to whom it refers.

- (c) Prohibited Statements in Regard to Spirituous ~~Liquors~~ Liquor. In addition to the applicable prohibited statements in Paragraph (a) of this Rule, an advertisement for spirituous ~~liquors~~ liquor shall not contain:

- (1) words "bond," "bonded," etc; any statement containing the words "bond," "bonded," or "bottled in bond," "aged in bond" or phrases containing these or synonymous terms, unless such words or phrases appear upon the labels of the spirituous ~~liquors~~ liquor advertised, and are stated in the advertisement in the manner and form in which they appear upon the label;
- (2) statements of age; any statement, design or device directly or by implication concerning age or maturity of any brand or lot of spirituous ~~liquors~~ liquor unless a statement of age appears on the labels of the advertised product; When any such statement, design or device concerning age or maturity is contained in any advertisement, it shall include, in direct conjunction therewith and with substantially equal conspicuousness, all parts of the statement concerning age and percentages, if any, which appear on the label. However, an advertisement for any whiskey or brandy which does not bear a statement of age on the label, or an advertisement for rum which is four years or more old, may contain general inconspicuous age, maturity or other similar representation, e.g., "aged in wood," "mellowed in fine oak casks";
- (3) the word "pure" except as part of the bona fide name of a permittee; or
- (4) the terms "double distilled," "triple distilled" or any other similar term.

Statutory Authority G.S. 18B-105(b).

.1006 GENERAL PROHIBITIONS

(a) Cents-off coupons or coupons offering free alcoholic beverages shall not be used as a method for advertising. ~~alcoholic beverages.~~

(b) No alcoholic beverages advertising shall be carried in any programs for events or activities in connection with any elementary or secondary schools; nor shall any alcoholic beverages advertising be connected with these events when broadcast over radio or television.

(c) No alcoholic beverages advertising shall be permitted by use of sound trucks.

(d) No spirituous liquor advertising shall be displayed upon the picture screen of any theater.

(e) ~~No~~ Except as otherwise provided in these Rules, no industry member or retailer shall promote ~~his~~ an alcoholic beverage product by giving prizes, premiums or merchandise to individuals for which any purchase of alcoholic beverages is required or based on the return of empty con-

tainers unless all containers of like products are accepted and considered on an equal basis with the product sold by the promoter.

(f) No on-premise permittee or his agent shall advertise any drink promotion prohibited by Rule 2S .0232. This Paragraph includes a ban on all advertisements of "2 for 1," "buy 1 get 1 free," "buy 1 get another for a _____ (nickle, penny, etc.)," and any other similar statement indicating that a patron must buy more than one drink.

Statutory Authority G.S. 18B-105(b).

1007 COOPERATIVE ADVERTISING PROHIBITED

~~There shall be no cooperative advertising as between a retailer on the one hand and an industry member on the other hand.~~

Except for point-of-sale advertising furnished to a retailer by an industry member, a retailer and an industry member shall not directly or indirectly cooperate in a joint effort to advertise alcoholic beverages, the retailer's business, or any promotion or other event unless prior written approval has been obtained from the Commission under 4 NCAC 2T .0717 of this Chapter. This Rule shall not be construed to prohibit the use by a retailer of items and services that may be lawfully sold or provided by an industry member as described in 4 NCAC 2T .0700 of this Chapter.

Statutory Authority G.S. 18B-105(b).

1008 ADVERTISING OF MALT BEVERAGES AND WINE BY RETAILERS

(a) Interior Advertising.

- (1) Point-of-Sale. Retail malt beverage and wine permittees may utilize any amount of point-of-sale advertising for malt beverage and wine products offered for sale in the establishment. ~~This advertisement advertising may be supplied by the manufacturer, importer or wholesaler in industry member unless it constitutes a fixture or has value other than as advertising material; except that an industry member may give a retailer brand-identified items listed in 4 NCAC 2T .0713(c) of this Chapter for use as point-of-sale advertising.~~
- (2) Price Boards. Retail malt beverage and wine permittees may display inside price boards showing the brand names and prices of malt beverage and wine products offered for sale in the establishment.

- (3) Menus and Beverage Lists. Retail on-premise malt beverage and wine permittees may place on the menu and beverage lists the brand names and prices of malt beverage and wine products offered for sale in the establishment. Menus and beverage lists may be supplied by ~~a malt beverage or wine manufacturer, importer or wholesaler an industry member provided no industry member's trade name or logo is duplicated on the list. the menu or beverage list is not printed with the retailer's food menu.~~

- (4) Retailer Advertising Specialty Items. Retailer advertising specialty items are items such as trays, coasters, mats, meal checks, paper napkins, glassware, cups, foam scrapers, back bar mats, thermometers and other similar items that bear advertising matter. ~~and that are not primarily valuable to the retailer as point-of-sale advertising media. Retailer advertising~~ Advertising specialty items may be used provided ~~these items are purchased to a retailer by an industry member as provided in 4 NCAC 2T .0713(b)(8) of this Chapter.~~

- (5) Window Displays. Retail malt beverage and wine permittees may arrange a reasonable number of malt beverage or wine products in a window display.

- (6) Location. No point-of-sale advertising, advertising specialty item or price board shall be displayed in a manner designed or intended to advertise malt beverages or wine on the outside of the establishment.

- (7) T-shirts. A retailer's employees shall not wear alcoholic beverage brand identified t-shirts while working on the retailer's licensed premises.

- (8) ~~(7)~~ Removal of Objectionable Signs. A permittee shall remove any sign, display or advertisement in or about his licensed premises if the Commission finds it is objectionable or contrary to public interest and orders its removal.

(b) Exterior Advertising.

- (1) Outside signs on the premises.

- (A) Malt Beverages. Retail malt beverage permittees may display the term "beer" or "cold beer" or "draught beer" on a single, non-mechanical outside sign. The letters and figures on the sign shall not be more than 5 inches in height and 2 inches apart and the sign shall be attached to the building on the licensed premises.

- (B) Wine. Retail wine permittees may display the term "wine permit-off premise"

approved by the Commission. ~~Advertising of spirituous liquors is prohibited in ABC stores, except that a display case may be used to show all brands carried in the store and delisted codes may be prominently displayed indicating a price reduction.~~

(b) Aerial Displays. No distiller, importer, or rectifier of spirituous liquor, or representative thereof, nor any retail permittee, shall advertise by means of an aerial display or inflatable the brand name or availability of spirituous liquor.

(c) Billboards. No distiller, importer, or rectifier of spirituous liquor, or representative thereof, nor any retail permittee, shall advertise by means of a billboard or sign the brand name or availability of spirituous liquor.

(d) Broadcasting. ~~No distiller, importer, or rectifier of spirituous liquor, or representative thereof, nor any retail permittee shall advertise by radio or television or any transmission to radio or television the brand name or availability of spirituous liquor.~~

(e) Point-of-Sale. Point-of-sale and advertising specialties for spirituous liquor ~~shall not~~ may be used in ABC stores ~~not~~ but not in retail establishments holding permits issued by the Commission. Advertising used in ABC stores shall conform to the provisions of Rule .1005 of this Section, and in addition shall not:

- (1) incorporate the use of any present or former athlete or athletic team;
- (2) refer to the availability of or offer any alcoholic beverages by mail; or
- (3) utilize case card loaders.

All point-of-sale advertising material, advertising specialties, and recipes, booklets or brochures intended for use and display in ABC stores shall first be submitted to the Commission for approval prior to their display in an ABC store.

Statutory Authority G.S. 18B-105.

.1012 NOVELTIES UTILIZING TRADEMARKS /NAMES: OTHER MATERIALS

Industry members may use or allow to be used their trademark, trade name or other similar advertising materials in the manufacturing of novelty items such as ~~glasses~~, ice chests, beach towels, ~~T-shirts~~, umbrellas, and other similar items provided that any advertising material other than trade name or trademark shall receive approval by the Commission prior to distribution in North Carolina. Novelties may be sold to a retailer by an industry member as provided in 4 NCAC 2T .0713(a)(1) of this Chapter.

Statutory Authority G.S. 18B-105(b).

.1014 RECIPES AND BOOKLETS

Recipes, booklets and brochures for cooking with alcoholic beverages and information with reference to the use of ~~certain alcoholic beverages~~ those products with certain foods are permitted and may specify the brand and the name of winery, the bottler, or manufacturer or importer. Malt beverage and wine industry members may give recipes, booklets and brochures for cooking with those products to retailers. Recipes, booklets and brochures for cooking with spirituous liquor shall be submitted to the Commission with point-of-sale materials as required in Rule .1011(e) of this Section.

Statutory Authority G.S. 18B-105(b).

.1020 REFUND OFFERS

(a) General. Refund offers may be used to advertise spirituous liquor and wine.

(b) Conditions. A refund offer is an offer to a consumer for a rebate of money or merchandise from a liquor or wine industry member, obtained by mailing a form. A refund offer is allowed under the following conditions:

- (1) A refund for liquor may be offered only by a manufacturer, importer, distiller, rectifier or bottler of spirituous liquor. A refund for wine may be offered only by a manufacturer, bottler, importer or non-resident vendor of wine.
- (2) A refund may be offered only to purchasers of the manufacturer's original unopened container of liquor that is purchased from a local ABC store, or to purchasers of the manufacturer's original unopened container of wine that is purchased from a retail wine permittee or local ABC store.
- (3) A refund may be offered only when the redemption form is a part of or attached to the package or container, or when the forms are available on tear-off pads displayed in the store. Any offer that is a part of or attached to the package or container shall be placed there by the industry member who offers the refund.
- (4) A refund offer shall apply throughout the state.
- (5) A refund offer shall include an expiration date.
- (6) A refund offer shall include a statement explaining the redemption procedure including the expiration date and length of time before the refund is sent to the purchaser. Refund offers shall be redeemed by mailing the redemption form to the industry member who offers the refund

or its designated redemption agent. Such an agent shall not be a retail or wholesale permittee in the state.

- (7) An industry member shall notify the Commission at least 10 days before it offers a refund on liquor. The notice shall state the proposed amount of the refund, its expiration date, to whom redemption forms must be mailed and the name, address and phone number of the redemption agent. The notice shall also include a sample of the redemption form.

- (8) An ABC board member, ~~or board~~ employee, retailer or retailer employee shall not receive refunds on offers obtained from liquor or wine packages or containers before sale at retail.

(c) Commercial ~~bribery; cooperative advertising.~~ Bribery; Cooperative Advertising. No ~~retail permittee,~~ local ABC board member, ~~or board~~ employee, retailer or retailer employee shall accept and no industry member shall pay any fee for the display or use of refund offers. The name of a retail business or retail permittee shall not appear on any refund offer.

(d) Advertising ~~refund offers.~~ Refund Offers. Refund offers may be advertised by newspapers, magazines or direct mail but no redemption form may appear in such advertisement. No refund offer for liquor may be advertised on the premises of any retail permittee.

Statutory Authority G.S. 18B-105(b).

SECTION .1100 - EFFECT OF ADMINISTRATIVE ACTION: FINES: OFFERS IN COMPROMISE

.1101 PROHIBITED ACTIVITY DURING PERIOD OF SUSPENSION

(a) The selling, dispensing or consuming of alcoholic beverage products on the licensed premises of any retail outlet is prohibited while the permit authorizing that activity is under suspension, ~~nor shall any~~ and no alcoholic beverages shall be removed from the premises during the suspension period.

(b) During a period of suspension of a permittee's permit, he continues to be a permittee and shall comply with all ABC laws, including conditions of his permit, during the suspension period. Suspension of permits does not operate to relieve any permittee of the continuing requirements for qualification for a permit.

(c) The suspension of any permit authorizing the sale of alcoholic beverages also suspends the permittee's authorization to purchase or accept deliveries of those alcoholic beverages from a

wholesaler or local ABC board for the entire length of the active suspension period.

(d) Suspensions shall begin at 7:00 a.m. on the effective date ordered by the Commission in the Order of Suspension or Order of Compromise.

Statutory Authority G.S. 18B-104; 18B-207; 18B-1004(a); 18B-1008.

.1103 MEMBERSHIP REQUIREMENTS STILL APPLICABLE

A permittee holding a Brownbagging or Mixed Beverages Permit as a private club shall continue to comply with all requirements of the ABC laws regarding membership and operation of the business as a private facility.

Suspension of a private club permit does not operate to relieve the permittee of the continuing requirements for qualification for a private club permit, including requirements regarding membership and operation as a private facility.

Statutory Authority G.S. 18B-207; 18B-1008.

SUBCHAPTER 2T - INDUSTRY MEMBERS: RETAIL/INDUSTRY MEMBER RELATIONSHIPS: SHIP CHANDLERS: AIR CARRIERS: FUEL ALCOHOL

SECTION .0100 - DEFINITIONS: APPLICATION PROCEDURES

.0101 DEFINITIONS

The following terms shall have the following meanings when used in this ~~Subchapter:~~ Chapter:

(1) "Brand," in relation to wines, means the name under which a wine is produced and shall include trade names or trademarks. A brand shall not be construed to mean a class or type of wine, but all classes and types of wines sold under the same brand label shall be considered a single brand. Differences in packaging such as a different style, type or size of container are not considered different brands.

(2) "Industry member" means any wholesaler, salesman, brewery, winery, bottler, importer, distiller, rectifier, nonresident vendor, vendor representative, or affiliate thereof, that sells or solicits orders for alcoholic beverages, whether or not licensed in this state.

(3) "Retail permittee" or "retailer" means any permittee holding a retail alcoholic beverage permit issued pursuant to the authority of G.S. 18B-1001, but shall not include a non-profit or political organization that has been issued a Special One-Time permit pursuant

to the provisions of G.S. 18B-1002(a)(2) or (5).

(4) ~~(4)~~ "Representative" means any vendor representative, as that term is defined in G. S. 18B-1112, or any other person selling or soliciting orders for alcoholic beverages on behalf of a manufacturer, bottler, ~~or~~ vendor, or importer.

(5) ~~(2)~~ "Vendor" means any nonresident malt beverage vendor or nonresident wine vendor, as those terms are defined in G.S. 18B-1113 and 18B-1114.

(6) ~~(3)~~ "Wine" means both fortified wine and unfortified wine, as those terms are defined in G.S. 18B-101(7) and (15).

Statutory Authority G.S. 18B-101; 18B-207; 18B-1112; 18B-1113; 18B-1114.

SECTION .0200 - PRODUCT APPROVALS: LISTING PROCEDURES: PRODUCT LISTS

.0201 MALT BEVERAGE PRODUCT APPROVALS: LISTING IN STATE

(a) All malt beverage products offered for sale shall first be approved by the Commission. Thereafter, any approved malt beverage product sold in this State shall conform to the analysis of the samples submitted.

(b) Samples. Any industry member who submits to the Commission a malt beverage product for approval for sale in the State shall furnish, without cost to the Commission, at least 450 milliliters (15.30 ounces) of the a sample of the product in two a marketable containers. container.

(c) Procedure for Listing. To receive consideration by the Commission for a new malt beverage product, an industry member shall comply with the following procedures:

- (1) All items shall be submitted in duplicate with a list of all container sizes being offered;
- (2) All labels shall be submitted in duplicate and attached to the application form;
- (3) A copy of the Federal Label Approval Form shall be submitted;
- (4) Payment of a non-refundable analysis fee in the amount of twenty-five dollars (\$25.00) shall accompany the application of each new item submitted; except if the industry ~~members member~~ submits a certified laboratory analysis of the product, payment of a non-refundable administrative fee in the amount of ten dollars (\$10.00) shall be submitted.

(d) If an analysis of a product is submitted it shall provide at least the following information in English:

- (1) alcohol by volume (maximum six percent),
- (2) total sulphur dioxide content (maximum 25 ppm),
- (3) gallo-tannins (maximum 100 ppm),
- (4) calories per 360 milliliters (12 ounces), and
- (5) specific gravity.

(e) All forms required for the listing, analysis and approval of any malt beverage product shall be stapled together and forwarded to the ABC Commission, 3322 Garner Road, P.O. Box 26687, Raleigh, North Carolina 27611-6687.

Statutory Authority G.S. 18B-206; 18B-207.

.0202 WINE APPROVALS: LISTING IN STATE

(a) Except as provided for special orders, before any wine is offered for sale in this State, it and the label used upon the container shall first be approved by the Commission. The Commission shall provide blank Wine Analysis forms upon request. Thereafter, any approved wine sold shall conform to the analysis of the samples submitted.

(b) Sample of Wine Required. An industry member shall submit, without cost to the Commission, a sample of any wine that is the subject of application for listing for inspection and analysis.

(c) The steps required to receive consideration by the Commission for a new wine listing are:

- (1) submit all items on the form in duplicate, fortified and unfortified wines listed on separate forms;
- (2) submit all labels in duplicate attached to the form;
- (3) submit a 500 milliliter (or a larger size if 500 milliliter is not available) bottle of each product offered for examination;
- (4) list all sizes being offered on the form;
- (5) submit a copy of the Federal Label Approval;

~~(6) submit not less than a 500 milliliter sample of brandy used to fortify any fortified wines;~~

~~(6)~~ ~~(7)~~ submit a check in the amount of twenty-five dollars (\$25.00) for each new item submitted, except if a verified laboratory analysis of the product is submitted, a check in the amount of ten dollars (\$10.00);

~~(7)~~ ~~(8)~~ staple together all forms submitted with each item and forward to the North Carolina Alcoholic Beverage Control

Commission, 3322 Garner Road, P.O. Box 26687, Raleigh, North Carolina 27611-6687.

(d) If an analysis of a product is submitted, it shall provide at least the following information in English:

- (1) alcohol by volume (percent);
- (2) total acidity (g/100 cc as tartaric acid);
- (3) total sulphur dioxide content (ppm);
- (4) volatile acidity, exclusive of sulphur dioxide (g/100 cc as acetic acid);
- (5) alcohol-free soluble solids (degrees/Brix degrees/Balling); and
- (6) identity and quantity of any added chemical preservative.

Statutory Authority G.S. 18B-206; 18B-207.

.0203 SPIRITUOUS LIQUOR PRODUCT APPROVALS

(a) All brands of spirituous ~~liquors~~ liquor sold in this State shall have first been approved for listing and resale by the Commission.

(b) Listing Policy. In view of the fact that North Carolina is a monopoly state, the Commission is responsible for maintaining a wide range of spirituous liquor products and prices and a balanced selection between the various types of products. It is the Commission's responsibility to ~~insure~~ ensure that the various types of products, including specialty items and imports, are available to the North Carolina consumer, as well as the more popular products. To this end, the Commission shall, at least once a year, consider new spirituous liquor products for placement on the state's approved list. Listings shall be in the discretion of the Commission after considering sales trends of the type of product, sales trends of the product in other states, and the need for the product in the North Carolina market. The Commission shall also, at least once a year, consider delisting items from the approved list. Items maintaining adequate sales histories for type and price range will not be considered for delisting unless the delisting is part of a penalty invoked after hearing, pursuant to this Chapter.

(c) Items shall be submitted to the Commission for consideration for listing, and will be considered only if they are offered on the prescribed forms by the distiller, rectifier, bottler or importer, with the following warranty signed by an official of the distiller, rectifier, bottler or importer:

"It is hereby warranted that the case prices as shown hereon represent the lowest taxpaid F.O.B. distillery rate or point of final shipment rate offered any purchasers for the

same merchandise and that the freight as shown hereon does not exceed the cost of delivery of this merchandise to North Carolina."

Statutory Authority G.S. 18B-206; 18B-207.

.0206 NEW FILING REQUIRED UPON TRANSFER OF BRAND

When any malt beverage or wine brand or product is transferred from one nonresident vendor, manufacturer or importer to another, the new vendor, manufacturer or importer shall, within 30 days of the acquisition of the brand or product, submit the following items to the Commission:

- (1) label approval application forms (BWL008) in duplicate, with labels attached;
- (2) copies of Federal Label Approval forms in duplicate;
- (3) a certified laboratory analysis of the product, in English, showing alcohol content by volume, with a check in the amount of ten dollars (\$10.00); and
- (4) the wholesaler territorial designations for the brand and product that were in effect on the date the product was acquired by the vendor, manufacturer or importer.

Compliance with this Rule is mandatory notwithstanding the fact that the product has been previously approved by the Commission.

Statutory Authority G.S. 18B-203(a); 18B-206; 18B-1203; 18B-1303(a); 18B-1305(d).

SECTION .0400 - STANDARDS OF IDENTITY FOR WINE: CONTAINERS

.0401 APPLICATION OF STANDARDS

All wines produced, imported, bottled, or offered for sale in this State shall meet the standards of identity prescribed as of ~~February 1, 1984~~, April 1, 1986, in Subpart C, Part 4, Chapter 1, Title 27 of the Code of Federal Regulations.

The Commission has a copy of those regulations available for inspection at the address in this Rule. Copies are available at a cost of ~~ten cents (\$.10)~~ twenty-five cents (\$.25) per page.

North Carolina ABC Commission
3322 Garner Road
P. O. Box 26687
Raleigh, N. C. 27611-6687

Authority G.S. 18B-206(a); 18B-207; 27 C.F.R. 4.20 through 27 C.F.R. 4.27.

.0409 PROHIBITED PRACTICES

(a) The production, importation or sale within this State of any product as or under the design-

nation of wine that fails to conform to the standards prescribed in these Rules, ~~or of any wine fermented from raisins, dried fruits or dried berries,~~ or of any imitation or substandard wine is prohibited.

- (b) Imitation Wine. Imitation wine includes:
 - (1) any wine containing synthetic materials;
 - (2) any wine made from a mixture of water with residues remaining after thorough pressing of grapes, fruit or other agricultural products;
 - (3) any class or type of wine, the taste, aroma, color or other characteristics of which have been acquired in whole or in part by treatment with methods or materials of any kind, if the taste, aroma, color or other characteristics of normal wines of a any such class or type are acquired without that treatment; or
 - (4) any wine made from must concentrated at any time to more than 80 degrees (Balling). ~~or~~
 - (5) ~~fruit wine not derived wholly from one kind of fruit such as "berry wine," "citrus wine" or "citrus fruit wine."~~
- (c) Substandard wine includes:
 - (1) any wine having a volatile acidity in excess of the maximum prescribed therefor in these Rules;
 - (2) any wine for which no maximum volatile acidity is prescribed in these Rules having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, in excess of 0.14 gram per 100 cubic centimeters (20 degrees Centigrade);
 - (3) any wine for which a standard of identity is prescribed in these Rules that through disease, decomposition or otherwise fails to have the composition, color and clean vinous taste and aroma of normal wines conforming to that standard;
 - (4) wine of any class or type containing added water or a sugar and water solution in excess of the quantities expressly authorized for standard wine made from the same kind or kinds of materials as prescribed in these Rules;
 - (5) any wine containing monochloroacetic acid or any other substance or preservative prohibited by the United States Food and Drug Administration or the Federal Alcoholic Tax Unit; or
 - (6) any wine containing deleterious, harmful or impure substances or elements or an improper balance of elements.
- (d) Coined Names
 - (1) Mixture of Wines. The sale in this State of wines identified on labels or in adver-

tisements by a type or brand designation that implies mixtures of wines for which standards of identity are established in these Rules, or which identifying type or brand designation resembles an established wine type name such as "Angelica," "Madeira," "Muscatel," "Claret," "Burgundy," etc., is prohibited.

- (2) Combinations of Alcoholic Beverages. The sale in this State of wines or combinations of wine and other alcoholic beverages that contain on the labels statements such as "whiskey wine," "rum and wine," "gin and wine," "beer and wine" or similar combinations is prohibited.

Statutory Authority G.S. 18B-206(a); 18B-207.

SECTION .0500 - INDUSTRY MEMBERS: GENERAL PROVISIONS

.0501 INSPECTION OF PREMISES

Any storage facility, warehouse or office area where malt beverages or wine are stored or ~~man-~~
~~ufacturer~~ manufactured or where records of purchases, sales or deliveries are maintained shall be considered the licensed premises and shall be made available for inspection as provided in G.S. 18B-502.

Statutory Authority G.S. 18B-207; 18B-502.

.0502 RECORD KEEPING REQUIREMENTS: SALES TICKETS

(a) In addition to records required to be kept by the North Carolina Department of Revenue, all industry members shall maintain on the licensed premises a ~~carbon~~ copy of every original sales ticket or receipt that relates to sales of alcoholic beverage products, equipment, advertising specialty items, or advertising novelties.

(b) Sales Ticket Required. Wholesalers or their salesmen shall, at the time of each sale and delivery of malt beverages or wine to a retailer, provide on every retail sales ticket the following information:

- (1) date of sale;
- (2) name of establishment;
- (3) ~~retailer's malt beverage and wine permit number or numbers;~~
- (3) ~~(4)~~ location;
- (4) ~~(5)~~ quantity of each brand of malt beverages or wine sold;
- (5) ~~(6)~~ unit price;
- (6) ~~(7)~~ total price;
- (7) ~~(8)~~ amount received;
- (8) ~~(9)~~ invoice number; and
- (9) ~~(10)~~ route, if applicable.

All sales tickets shall be endorsed at the time of sale by the retailer or authorized agent and by the wholesaler with the usual signature of each. All sales tickets shall be retained by the wholesaler for a period of three years and shall be filed alphabetically, by sales route, or chronologically by date of sale.

Statutory Authority G.S. 18B-207.

SECTION .0600 - SALES AND DELIVERIES OF MALT BEVERAGES AND WINE

.0602 SALES AND PURCHASE RESTRICTIONS: RECORDS

(a) No wholesaler of malt beverages shall sell malt beverages to any person who does not hold a retail or wholesale Malt Beverage permit, and no wholesaler of wine shall sell any fortified wine or unfortified wine to any person who does not hold the appropriate retail or wholesale Fortified or Unfortified Wine Permit; except, that a wholesaler may furnish or sell wine or malt beverages to his employees for the sole use of the employees.

(b) No retail malt beverage or wine permittee shall purchase those alcoholic beverages from anyone other than a licensed wholesaler.

(c) No malt beverage wholesaler shall sell, ship, or distribute any brand of malt beverages to any retail permittee located outside the territory described in that wholesaler's distribution agreement for the product filed pursuant to G.S. 18B-1109(b), 18B-1303(a).

(d) All persons holding retail Malt Beverage or Wine Permits shall keep the sales tickets and delivery receipts furnished by the wholesaler, pursuant to Rule .0502 of this Subchapter, as well as all other records of purchases of malt beverages and wine, filed separate and apart from all other records. Delivery receipts shall set forth terms of sale for each separate transaction between the retailer and the wholesaler and shall include for each separate sale:

- (1) date of sale;
- (2) trade name of retail establishment;
- (3) ~~permit number;~~
- (3) ~~(4)~~ location;
- (4) ~~(5)~~ quantity of each brand of alcoholic beverage sold;
- (5) ~~(6)~~ unit price;
- (6) ~~(7)~~ total price;
- (7) ~~(8)~~ amount paid; and
- (8) ~~(9)~~ invoice or receipt number.

(e) The retailer shall retain for inspection copies of all tickets and receipts on the premises for three years.

(f) A retail permittee who operates multiple locations may maintain beer and wine invoices at one central location upon written application to and approval by the Commission.

Statutory Authority G.S. 18B-207; 18B-1107; 18B-1109; 18B-1303(a).

.0604 COLLECTION OF AMOUNT OF SALE

(a) Each wholesaler shall collect the full amount of the sale price in cash or bona fide check at the time of or prior to delivery of alcoholic beverages to a retailer except as provided in this Rule. No wholesaler shall extend credit for any period of time to any retailer who purchases malt beverages or wine from him.

(b) Collections for sales and deliveries upon military reservations, however, shall not be required at the time of the transaction.

(c) A route salesman may accept one payment for all deliveries made by him on the same day to the same permittee if deliveries are made to two or more of the permittee's retail premises on the same route. Payment in such cases shall be collected by the salesman for all such deliveries no later than at the last store account on the route. Nothing in this Rule shall be construed to authorize a route salesman to collect payment from a permittee at an office location unless the office is located on the premises where the last delivery is made.

Statutory Authority G.S. 18B-207; 18B-1116.

.0605 RESTRICTED HOURS ON SALES OR DELIVERIES

~~No wholesaler or his agent or employee shall sell or deliver any malt beverages or wine to a retail permittee during hours when sales of alcoholic beverages are unlawful under G.S. 18B-1004(a), (b), or (c).~~

Statutory Authority G.S. 18B-207; 18B-1004.

.0607 DRAUGHT MALT BEVERAGE SALES: ACCESSORIES: DELIVERIES

(a) Delivery to Retailer; Consumer. For each sale of draught beer, the wholesaler shall transport the beer to the premises of a licensed retailer. There the wholesaler shall collect for the sale, and the retailer shall complete and sign his sales ticket, writing on it the name of the purchaser and the address to which the beer is to be delivered. If the purchaser of the draught beer can not transport the beer or does not know how to set up and tap the beer, he may request that the wholesaler assist him. Upon receiving such a request, the wholesaler may deliver the beer from

the retailer's premises to the person and place designated and may set it up.

(b) Assisting Consumer. Upon arrival at the designated place of delivery, the wholesaler may set up the equipment, tap the keg and test to see that it is working properly. The wholesaler may pick up his kegs and equipment at any time.

(c) Tapping Accessories. Hand pumps, carbon dioxide cylinders, related gauges, tubs, ice and cups may be delivered with the kegs by a wholesaler to a consumer. Such accessories may be left with a retailer only upon the filling of an order from a retailer who has a specific and current order from a consumer, and the kegs and accessories are to be delivered by the retailer or picked up by the consumer. Nothing in this Rule shall be construed to allow a wholesaler to loan or rent tubs or tapping accessories to a retailer for any period of time.

(d) Keg Deposits. Any deposit charged by a brewer to a wholesaler for a draught malt beverage keg shall be charged to and collected from the retailer upon delivery of the keg to the retailer.

Statutory Authority G.S. 18B-207; 18B-1116.

.0608 DRAUGHT MALT BEVERAGE

EQUIPMENT SALES: TERMS OF SALE

Malt beverage wholesalers may sell draught boxes and equipment to retail malt beverage outlets at not less than the total laid in cost financed over a maximum period of three years, and the salesmen of the wholesaler may collect payments from the retailer for the purchase of this equipment. These transactions shall include the following terms: a down payment of at least 20 percent of the total purchase price; interest at not less than the current prime rate on the date of the contract on the outstanding unpaid balance at the outset of each 12 months of the period. At no time shall payments be more than 30 days in arrears. If the above terms are not met, the wholesaler shall immediately repossess the equipment, and the retailer shall surrender it. Wholesalers and retailers shall retain copies of these sales contracts for inspection for a period of three years.

Statutory Authority G.S. 18B-207; 18B-1116.

.0610 REFUSAL TO SELL; PRICING; SERVICING ACCOUNTS

(a) Refusal to Sell to Retailer. A wholesaler of malt beverages or wine may refuse to sell alcoholic beverages to a retailer for legitimate business reasons so long as the decision not to sell is not related to the size of the account, the

distance of the retailer's premises from the wholesaler's warehouse, or the sex, race, age, religion or national origin of the permittee.

(b) Pricing. As used in G.S. 18B-1303(b), the term "service" shall not be construed to prohibit a malt beverage wholesaler from reducing the price of a product in a portion of his assigned territory if the price reduction is made in order to meet a competitor's lower prices offered on similar categories of malt beverage products (e.g. "premium" or "low end" products) in that same portion of the territory.

Statutory Authority G.S. 18B-207; 18B-1303(b).

SECTION .0700 - ALCOHOLIC BEVERAGES: RETAILER/INDUSTRY MEMBER RELATIONSHIP: TRADE PRACTICES

.0702 DEFINITIONS

(a) No industry member, whether licensed in this State or not, or its officer, director, employee or affiliate shall either directly or indirectly lend, give, furnish, or offer to any retail permittee or his employee, or to the owner of the premises on which the business of the retailer is conducted, nor shall such a permittee, employee, or owner require by agreement or otherwise to accept from such a member any money, services, furniture, fixtures, signs, draught equipment or parts, glasses, napkins, trays, coasters, novelty items, mirrors, supplies, or other thing of value including any free goods, merchandise, merchandise given free upon the basis of a retailer's purchase reaching a certain quota, or any quantity discounts of alcoholic beverage products, or otherwise fail to carry out in good faith the purpose of this Rule.

(b) Definition of Terms. For the purpose of this Rule, prohibited services include free installation, repair or maintenance of equipment and free installation of outdoor signs or other fixtures. "Thing of value" includes, promoting a particular retailer in advertisements; providing prizes at retailer conventions; advertising in retailer periodicals; sponsoring parties for retailers; guaranteeing loans of retailers; extending credit to retailers; failing to require a deposit equal to that charged by a supplier on kegs and returnable bottles; or making discounts, rebates or refunds conditioned on their being applied by the retailer to pay off a loan.

For the purposes of this Section, the following definitions shall apply:

(1) "Equipment" shall include draft beer boxes, wine dispensing machines, refrigeration devices, sinks, dishwashers, dispensing trucks, trailers, caddies, and any other item useful

or suitable for the preparation, serving, dispensing or cleaning of food or beverages or food and beverage containers.

- (2) "Point-of-Sale advertising" shall mean advertising material such as signs, posters, banners, and decorations that bears conspicuous and substantial product advertising matter, that has no secondary value to the retailer, and that is designed and intended to be used inside a retailer's licensed premises where alcoholic beverage products are displayed and sold.
- (3) "Promotion" shall include any advertising publicity or sponsorship activity in connection with any special event, function or holiday that is outside the scope of routine sales and marketing, and shall include fundraisers, concerts, sporting events, festivals, celebrations, anniversaries, ceremonies, operations, observances, sweepstakes or contests.

Statutory Authority G.S. 18B-207; 18B-1116.

.0704 REMOVAL OR DISTURBANCE OF OTHER BRANDS PROHIBITED

No wholesaler shall remove from a retailer's premises any bottles, cartons or kegs bearing brand identification except brands that are distributed by that wholesaler. No wholesaler shall remove, rearrange or otherwise disturb any malt beverages or wine displayed on a retail licensed premises by another wholesaler, except: ~~to return merchandise to its properly assigned shelf space when it has been inadvertently placed in the wholesaler's assigned space.~~

- (1) to return merchandise to its properly assigned shelf space when it has been inadvertently placed in the wholesaler's assigned space; or
- (2) to remove a competitor's product from a promotional display area that has been assigned to the wholesaler, and the competitor's personnel are not available to move their own product from the area at the time the wholesaler's product is scheduled to go on promotion.

Statutory Authority G.S. 18B-207; 18B-1116(b).

.0707 INDUCEMENTS (TIED HOUSE)

No industry member shall:

- (1) acquire or hold any interest in any license or permit with respect to the premises of a retail permittee;
- (2) acquire any interest in real or personal property owned, occupied, or used by a retail permittee in the conduct of his business;

- (3) furnish, give, rent, lend, or sell to a retail permittee any equipment, fixtures, signs, supplies, money, services, or other things of value except as otherwise provided in these Rules;
- (4) pay or credit a retail permittee for any advertising, display, or distribution service;
- (5) guarantee any loan or the repayment of any financial obligation of a ~~retail~~ retail permittee;
- (6) extend credit to a retail permittee, except as otherwise provided in these Rules; ~~or~~
- (7) require a retail permittee to take and dispose of a certain quota of any alcoholic beverages;
- (8) acquire any interest in a mortgage or deed of trust on the retailer's business or property;
- (9) pay for the display of advertising on any signs or scorecards manufactured by a third party for a retailer;
- (10) furnish free warehousing by delaying delivery of alcoholic beverage product or by providing refrigerated vehicles for a retailer;
or
- (11) purchase advertising on signs, scoreboards and programs at ballparks, racetracks, and coliseums from the retail concessionaire, unless the retailer is a city or county, and an exemption has been granted pursuant to G.S. 18B-1116(b).

Statutory Authority G.S. 18B-207; 18B-1116(a).

.0708 COMMERCIAL BRIBERY

(a) No industry member shall make secret gifts or payoffs to purchasing agents, clerks, bartenders, salesmen or other employees of retail permittees.

(b) No industry member shall give any bonus, premium or compensation to any retailer or an officer, employee or agent of the retailer. Prohibited acts include:

- (1) monetary inducements ("push money") given to retailers or their employees;
- (2) total or partial payment of a retailer's employee's salary;
- (3) sales promotion contests in which a retailer's employees are offered or awarded prizes, such as trips abroad, cash, or automobiles that are totally or partially financed by an industry member;
- (4) payments or gratuities to groups or associations of retailer's employees; ~~or~~
- (5) other gifts such as trips, appliances, or other items given to retail corporate officers; or
- (6) participation in a retailer's sales or management meetings, conventions or outings

by sponsoring or underwriting any events in connection with the meeting, convention or outing, unless such participation is limited to the providing of a hospitality suite with light hors d'oeuvres and beverages, and the price paid for the suite is not greater than that paid by any other participant in the meeting, convention or outing.

Statutory Authority G.S. 18B-207; 18B-1116(a).

.0709 CONSIGNMENT SALES: CONDITIONAL SALES: RETURNS

(a) Consignment Sales Prohibited. No industry member shall sell, offer for sale, or contract to sell to any retail permittee, nor shall any retail permittee purchase, offer to purchase, or contract to purchase from any industry member any alcoholic beverages on consignment or under conditional sale, or with the privilege of return, or on any basis other than a bona fide cash sale. For the purposes of this Rule, a consignment sale is any transaction in which title to the merchandise is not transferred at the time of shipment or delivery and which does not involve some form of full cash settlement. No industry member shall contract or agree with a retailer to retain title of alcoholic beverages until those products are sold.

(b) Privilege of Return. No industry member and retailer shall enter into any agreement whereby the retailer has an expressed or implied right to return alcoholic beverages that he cannot sell. Any acceptance of returned merchandise will be considered a strong indication that the "privilege of return" existed at the time of sale, and a repeated practice of accepting returned merchandise from a retailer would establish an implied privilege of return, even though no formal agreement has been made.

(c) Exception. This Rule shall not apply to transactions involving solely bona fide return of alcoholic beverages for ordinary and usual commercial reasons arising after the alcoholic beverages have been sold, such as mutilated labels or containers, product deterioration, or a bona fide discontinuance of retailer's business.

(d) Sales Conditioned on the Acquisition of Other Merchandise. No industry member shall make any agreement with any retailer to accept as an agreement incident to present or future sales other alcoholic beverages that the retailer wants to remove from his inventory. The exchange of alcoholic beverages for equal quantities of the same type and brand in containers of another size and style is not considered an acquisition of "other" alcoholic beverages and,

therefore, is not prohibited where the return is otherwise permissible.

(d) Exceptions. This Rule shall not apply to the following transactions:

- (1) returns of malt beverages or wine for ordinary and usual commercial reasons arising after the alcoholic beverages have been sold, such as mutilated or damaged labels or containers, error in delivery, product deterioration, or a bona fide discontinuance of the retailer's business;
- (2) exchanges of malt beverage products for equal quantities of the same brand, type, size and container style, so long as the manufacturer's code date on the products will expire within 14 calendar days of the date of exchange, and the quantity exchanged does not exceed 20 cases of each brand per 14 day period. For the purposes of this Rule, the term "exchange" means to replace product for product and does not authorize the wholesaler to accept returned malt beverage products for cash or credit;

- (3) returns of wine or malt beverage products from a seasonal retailer who is open only a portion of the year if the products are likely to spoil during the off-season. For purposes of this Rule, a "seasonal retailer" is defined as one that closes its business completely for a period of at least eight weeks during the summer or winter months. Returns from a seasonal retailer may be for cash or credit.

Note: The return or exchange of wine products is governed by this Rule and the regulations under the Federal Alcohol Administration Act found in Title 27 of the United States Code of Federal Regulations, Part 11 (27 CFR Sec. 11.1 through 11.46), and nothing in these Rules shall be construed to authorize the return or exchange of wine products if the transaction is prohibited by federal law.

Authority G.S. 18B-207; 18B-1116; 27 C.F.R. 11.1 through 27 C.F.R. 11.46.

.0710 EXCEPTIONS: ACCEPTED TRADE PRACTICES

(a) In retail outlets where wholesalers have been assigned specific space, these wholesalers may price or reprice their stock as designated by the retailer and rearrange and place their brand or brands in their assigned shelf space so as to properly rotate their stock and keep their assigned space clean and neat. This exception authorizes a wholesaler to rearrange or reset a

retailer's alcoholic beverage shelf space, display area, or department pursuant to that retailer's plan and direction, but that wholesaler shall not move or disturb brands sold by other wholesalers.

(b) Coil Cleaning Service. A wholesaler of wine or malt beverages may render coil cleaning services to a retailer who has draught equipment.

Statutory Authority G.S. 18B-207; 18B-1116(b).

.0711 PROHIBITED TRADE PRACTICES

(a) General. It shall be a violation of these Rules for any industry member, whether or not licensed in this state, or any officer, director, employee or affiliate, to either directly or indirectly lend, give, furnish or offer to any retail permittee or his employee, or to the owner of the premises on which the business of a retailer is conducted, or for any retail permittee, employee, or owner to demand, require or accept from any industry member, any money, services, furniture, fixture, equipment, sign, glasses, barware, supplies or other thing of value, except as provided in these Rules.

(b) Prohibited Services. By way of illustration, but not limitation, the following services shall not be furnished, given, provided or made available to a retail permittee by an industry member, even if the retailer is charged or billed for the services for their market value:

- (1) installing, repairing or maintaining equipment, outdoor signs or other fixtures;
- (2) promoting a retailer in advertising;
- (3) reconciling inventory for a retailer;
- (4) breaking down empty boxes, cases or cartons;
- (5) providing labor or employees to assist a retailer in the retailer's promotional events;
- (6) loaning or renting aerial displays or outdoor inflatables to a retailer for use, whether on or off the retailer's licensed premises;
- (7) pricing or repricing a product without the retailer's consent;
- (8) warehousing, by:
 - (A) making refrigerated vehicles available to the retailer; or
 - (B) delaying delivery from a manufacturer, importer, nonresident vendor or warehouse in order to enable the retailer to take advantage of promotional prices or for any other reason;
- (9) providing shelving schematics that are customized for an individual retailer or group of retailers, whether based on total

beer or wine sales records from one store or a group of stores, but an industry member may use its own sales statistics and records to develop a suggested shelf plan for alcoholic beverage products;

- (10) affixing special retailer stamps or stickers to beer or wine packaging, but a wholesaler may affix signs, stickers, stamps, or tags indicating the product's price to a container, shelf or display of its products;
- (11) entering delivery data on a retailer's in-store computer;
- (12) providing data processing services;
- (13) sponsoring sports leagues that are also sponsored by a retailer, or that use the facilities of a retailer for sporting events;
- (14) guaranteeing the loan of a retailer;
- (15) extending credit to a retailer;
- (16) failing to require a deposit equal to that charged by the supplier on kegs and returnable bottles; or
- (17) negotiating special prices for or financing of equipment.

(c) Prohibited Things of Value. By way of illustration, but not limitation, the following things of value shall not be furnished, given, loaned, rented or sold to a retail permittee by any industry member:

- (1) aerial displays or tethered inflatables;
- (2) parties given for retailers or groups of retailers' employees, unless otherwise allowed by the rules of the Commission;
- (3) prizes at retailer conventions;
- (4) advertising in a retailer periodical or advertising in a retailer publication designed for distribution to consumers;
- (5) outside signs;
- (6) cooperative advertising, including, but not limited to:
 - (A) providing or assisting retailer promotions, whether on or off the retailer's premises;
 - (B) participation with a retailer in the advertising of alcoholic beverages, the retailer's business or special events unless specifically approved by the Commission in the case of fundraisers for non-profit charitable organizations;
 - (C) underwriting the cost of T-markers, scorecards or scoreboards by the purchase of advertising from a third party; or
 - (D) customizing point-of-sale advertising materials, novelties, glassware, consumer specialties or product displays by printing or having printed the retailer's name, slogan or logo on the item, unless otherwise specifically allowed in the rules of the Commission;

- (7) making discounts, rebates or refunds to a retailer on the condition that the retailer use the discount, rebate or refund to pay off a loan;
- (8) equipment, fixtures or furnishings; or
- (9) clothing, except as provided in Rule .0713 of this Section.

Statutory Authority G.S. 18B-207; 18B-1116 (a) (3), (b).

**.0712 ACCEPTED TRADE PRACTICES;
SERVICES**

The following service activities are specifically allowed in transactions between industry members and retailers:

- (1) Shelving; Pricing. In retail outlets where wholesalers have been assigned specific space, these wholesalers may price or reprice their stock as designated by the retailer and rearrange and place their brand or brands in their assigned shelf space so as to properly rotate their stock and keep their assigned space clean and neat. This Rule authorizes a wholesaler to rearrange or reset a retailer's alcoholic beverage shelf space, display area, or department pursuant to that retailer's plan and direction, but that wholesaler shall not move or disturb brands sold by other wholesalers.
- (2) Coil Cleaning Service. A wholesaler of wine or malt beverages may render coil cleaning services to a retailer who has draught equipment.
- (3) Generalized Schematics; Restrictions. General alcoholic beverage product schematics and shelving diagrams may be utilized by an industry member for sales presentations so long as:
 - (a) the diagram utilizes generally available national, state or regional market research or the industry member's own sales data;
 - (b) the industry member does not solicit or receive individual sales figures or data from an individual retailer or group of retailers; and
 - (c) the schematic or diagram is not customized for an individual retailer or group of retailers who are similarly situated.
- (4) Participation in Retailer Association Activities. An industry member may participate in retailer association activities by:
 - (a) displaying product at association conventions or trade shows;
 - (b) renting display or booth space so long as the rental fee is not excessive and is the same as the fee paid by all exhibitors;

- (c) providing hospitality events which are independent from association sponsored activities;
- (d) purchasing tickets to functions and paying registration fees if such fees are not excessive and are the same as paid by all exhibitors; and
- (e) making payments for advertisements in programs or brochures at association shows within the dollar limits established by 27 C.F.R. 6.100 and the Bureau of Alcohol, Tobacco and Firearms.
- (5) Educational Seminars. An industry member may provide or sponsor seminars for retailers and their employees in the following areas:
 - (a) the proper use of equipment;
 - (b) the proper storage, handling and service of alcoholic beverages;
 - (c) safe driving programs;
 - (d) recognizing underage and intoxicated customers; and
 - (e) the history or aspects of a product's manufacturing process. Seminars may be conducted at the premises of either the retailer or industry member. Nothing in this Rule shall be construed to authorize an industry member to pay the retailer's expenses in attending the seminar.
- (6) Tastings. Beer and wine tastings may be conducted in accordance with 4 NCAC 2S .0901 and .0902 of this Chapter.
- (7) Labor for Displays. An industry member may provide personnel to construct a promotional product display on the premises of a retailer, and may move other products from the display area in accordance with Rule .0704 of this Section.
- (8) Installations. The following items may be installed by an industry member at no charge to a retailer:
 - (a) point of sale advertising materials; and
 - (b) tapping accessories;
- (9) Bar Spending. An industry member may visit the premises of an on-premise retail account for the purpose of promoting its brands so long as:
 - (a) the visit is unannounced and not advertised; and
 - (b) a patron who refuses the industry member's offer to consume a product is offered a comparable beverage of his choice, either alcoholic or non-alcoholic.
- (10) Non-alcoholic Beverages. A malt beverage wholesaler who is also engaged in the business of selling non-alcoholic beverage products may engage in the accepted trade practices of the soft drink and

snack food industries, so long as the sales and practices surrounding the non-alcoholic beverage merchandise are not used as an unlawful inducement to purchase malt beverages.

Note: Wine wholesalers selling non-alcoholic beverage merchandise are governed by the provisions of 27 C.F.R. 6.101.

Authority G.S. 18B-203 (b); 18B-207; 18B-1116 (b); 27 C.F.R. 6.100; 27 C.F.R. 6.101 (1986).

**.0713 ACCEPTED TRADE PRACTICES;
THINGS OF VALUE**

(a) Items That Must Be Sold. The following things of value shall not be given, loaned or rented by any industry member to a retailer, but may be sold to the retailer at the price paid for the item by the first industry member who acquires the item:

- (1) novelties, such as coolers, umbrellas, ice chests, beach towels, towels, and sports equipment, so long as the novelty item has not been customized for a retailer with the retailer's name or logo;
- (2) glassware and cups, so long as the items have not been customized for a retailer with the retailer's name or logo;
- (3) carbon dioxide;
- (4) ice; and
- (5) beer tapping accessories, including standards, faucets, rods, vents, taps, hoses, washers, couplings, gas gauges, vent tongues, shanks, and check valves.

(b) Items That May Be Provided at No Charge. The following things of value may be given, furnished, loaned, rented or sold by an industry member to a retailer:

- (1) samples of product as provided in 27 C.F.R. 6.91;
- (2) recipes, booklets and brochures for cooking with wine or malt beverages, as described in 4 NCAC 2S .1014 of this Chapter;
- (3) wine and beer lists, in accordance with 4 NCAC 2S .1008(a)(3) of this Chapter;
- (4) combination packaging, as provided in 27 C.F.R. 6.93;
- (5) consumer specialty items such as bottle or can openers, cork screws, ash trays, shopping bags, individual can coolers, hats, caps, visors, t-shirts (without collars or buttons), or key chains. Such items may be given to retailers for distribution to consumers, or may be provided by industry member personnel at the retailer's place of business during unannounced and unadvertised visits. Consumer specialty

items shall not be customized for a retailer with the retailer's name or logo;

- (6) product displays, to include wine racks, bins, barrels, casks and shelving from which beer or wine are displayed and sold, so long as:
 - (A) each display bears conspicuous and substantial advertising matter; and
 - (B) the dollar limitations per brand imposed by 27 C.F.R. 6.83 are not exceeded;
- (7) point of sale advertising materials which have value only as advertising, so long as the pieces have not been customized for any individual retailer; and
- (8) retailer advertising specialty items as described in 4 NCAC 2S .1008(a)(4) of this Chapter, so long as the items have not been customized for an individual retailer, and so long as the dollar limitations per brand, as provided in 27 C.F.R. 6.85, are not exceeded.

(c) Point-Of-Sale Advertising Materials. Notwithstanding having a secondary value, the following items are considered to be point-of-sale materials and need not be submitted by an industry member for approval prior to use, so long as the items contain conspicuous and substantial advertising materials:

- (1) clocks;
- (2) lamps;
- (3) lighted displays;
- (4) blackboards;
- (5) bulletin boards;
- (6) dart board backgrounds;
- (7) menu and price boards;
- (8) tap standards;
- (9) calendars; and
- (10) mirrors.

Authority G.S. 18B-207; 18B-1116(b); 27 C.F.R. 6.83; 27 C.F.R. 6.85; 27 C.F.R. 6.91; 27 C.F.R. 6.93 (1986).

**.0714 TRANSACTIONS WITH GOVERNMENT
AND SPECIAL ONE-TIME PERMITTEES**

(a) Permitted Activities. Notwithstanding the restrictions contained in Rule .0711 of this Section, the following activities by industry members are specifically allowed, as described in this Rule, in transactions with cities, counties, the state, or in transactions with nonprofit or political organizations that have obtained a Special One-Time permit under the provisions of G.S. 18B-1002(a)(2) or (5), or nonprofit organizations that do not hold an ABC permit:

- (1) sponsorships of festivals, concerts, fundraisers or special events cosponsored by the local government, the state or

nonprofit or political organizations, including payments of advertising fees;

- (2) loaning or renting portable equipment to a local government, the state or a nonprofit or political organization so long as the equipment loaned or rented is for a single event of limited duration;
- (3) contracts to provide payment for permanent advertising on signs or scoreboards when the industry member has submitted a request for and received an exemption pursuant to G.S. 18B-1116(b);
- (4) providing labor or employees to assist in the setting up or changing of draft beer kegs and equipment;
- (5) loaning or renting previously approved aerial displays or outdoor inflatables for the duration of a special event, unless the event is held on the premises of a retailer;
- (6) loaning or allowing the use of refrigerated vehicles, unless the event is held in conjunction with and on the premises of a cosponsoring retailer;
- (7) providing novelties, prizes or prize money to nonprofit organizations that have obtained a Special One-Time Permit;
- (8) making cash contributions to nonprofit organizations;
- (9) participation with a local government or the state in the advertising of events cosponsored by the local government or state;
- (10) accepting the return of alcoholic beverages not sold, for cash or credit, after the event is over.

(b) Sponsorship/Advertising Agreements Restricted. No sponsorship agreement or advertising contract between an industry member and a city, county, the state, or a Special One-Time permittee shall contain any agreement, either express or implied, that the industry member's products will be sold to the exclusion, in whole or in part, of other brands of alcoholic beverages offered by competitors.

(c) Cosponsorship with Retail Permittee. In any promotion by an industry member with a local government, the state, or a nonprofit organization in which there is cosponsorship by a retailer other than the local government or the state, the industry member shall obtain prior written approval from the Commission as provided in Rule .0717 of this Section.

Statutory Authority G.S. 18B-207; 18B-1116(b).

.0715 TOURNAMENTS

(a) General. Sponsorship by an industry member of a regional, statewide or national

sports tournament, when the tournament is held on the property or premises of a retail permittee, is permissible only if all of the following conditions are met:

- (1) The tournament is promoted or sanctioned by the official governing body of the sport, or is promoted and sponsored by a bona fide nonprofit organization for the purpose of raising funds for a civic, scientific, charitable or educational cause;
- (2) No brand identified outdoor signs, banners, aerial displays or inflatables are displayed on the exterior of the retailer's premises;
- (3) No money, novelty items or other prohibited services or things of value are given, rented or loaned by an industry member to the retailer; and
- (4) All sponsorship money or fees and other things of value from the industry member are given to the official governing body of the sport or the nonprofit organization.

(b) Advertising. An industry member may advertise via mass media or pay for the advertising of a tournament when the primary theme of the advertisement is the tournament and its purpose. The naming of the retailer's premises as the location of a tournament shall not be construed to be cooperative advertising in violation of 4 NCAC 2S .1007 of this Chapter when the retailer's tradename is stated in substantially smaller typeface.

(c) Sponsorship/Advertising Agreements Restricted. No industry member agreeing to sponsor a tournament shall enter into any agreement or contract, either express or implied, that a retailer or special one-time permittee will sell that industry member's products to the exclusion, in whole or in part, of other brands of alcoholic beverages offered by competitors.

(d) Joint Sponsorships. An industry member shall not agree to cosponsor any tournament with any retail permittee unless the proceeds from the tournament are paid to a nonprofit civic, scientific, charitable or educational organization.

(e) Prohibited Sponsorships. An industry member shall not sponsor or aid a retailer in the promotion of any tournament held primarily to benefit the retailer, its employees, members or guests.

Statutory Authority G.S. 18B-207; 18B-1116(b).

.0716 CONSUMER CONTESTS; SWEEPSTAKES

(a) General. Consumer contests or sweepstakes may be offered by an industry

member so long as no purchase is required. Entry forms may be attached to or part of an alcoholic beverage label or package so long as alternative methods of entry are available to the consumer by means of a tear pad of entry forms available at the point of purchase.

(b) Point-of-Sale Permissible; Restriction on Retailer Involvement. An industry member may provide point-of-sale advertising materials promoting a sweepstakes or contest to a retailer. An industry member shall not offer or promote any sweepstakes or contest in conjunction with any retailer as a cosponsor or as the provider of any prize. No prizes may be drawn or awarded on the premises of any retailer.

Statutory Authority G.S. 18B-207; 18B-1116(b).

.0717 CONDITIONS WHEN COMMISSION APPROVAL REQUIRED FOR PROMOTIONS

(a) Prior Approval Required; Exceptions. An industry member shall obtain written approval from the Commission prior to entering into any agreement to engage in activities as a sponsor for any promotion, as that term is defined in Rule .0702(4) of this Section, unless the activity involves the following:

- (1) sponsorships of nonprofit organizations that are not special one-time permittees, and the sponsored activity is neither held on the premises of a retailer nor cosponsored by a retailer;
- (2) printing and distribution of items that are classified as point-of-sale advertising material, consumer specialty items, retailer specialty items or novelty items, so long as the items are displayed and distributed in compliance with these Rules;
- (3) promotions that occur on an annual or regular basis and that have received written approval by the Commission in previous years, so long as the sponsorship activities engaged in by the industry member have not changed; and
- (4) sponsorships of individual amateur sports teams, when:
 - (A) the services or things of value provided by the industry member are given to benefit the individual team and its members;
 - (B) the team is not comprised of retailers or employees of retailers; and
 - (C) the team is not jointly sponsored by a retailer.

(b) Procedures for Approval. Requests for approval of any promotional activity shall be made in writing by the industry member, and shall provide the following information:

- (1) names of all industry members participating;
- (2) names of all retailers involved as either cosponsors or as the host location;
- (3) name of nonprofit organization being sponsored, if any;
- (4) whether the organization being sponsored will obtain a Special One-Time permit;
- (5) purpose of the promotion;
- (6) beneficiary of the promotion, and description of what benefits will be derived by the beneficiary;
- (7) copies of broadcast and print advertisements;
- (8) samples of advertising pieces and costs of items;
- (9) outdoor advertising to be used and location;
- (10) date(s) of promotion; and
- (11) complete description of industry member's activities in relation to the promotion, including statement of monies, fees, and items to be given in exchange for sponsorship rights, and person to whom given.

(c) Notification to Wholesaler. A manufacturer, importer or nonresident vendor of beer or wine that receives approval for promotional activity under this Rule shall provide a copy of the Commission's approval to each of its wholesalers in this state if that wholesaler is or will be participating in the promotion in any manner, including the distribution of promotional materials.

(d) Approvals Restricted to Industry Members. No approval for any promotional activity by an industry member will be granted to a special one-time permittee, retailer, advertising agency, broadcaster or publisher.

(e) Approvals Granted Only Upon Written Request. The Commission will decline the approval of any verbal requests or hypothetical fact presentations describing promotional activities requiring prior written approval under this Rule.

(f) Timing of Requests. Industry members are encouraged to submit promotions for approval at least two months in advance of the promotion to allow adequate review by the Commission, and to allow for the mailing of written approvals to the industry member.

(g) Promotion Agreements Restricted. Commission approval of a promotion under this Rule shall not be construed as approval for the industry member to enter into any agreement, either express or implied, that its products will be sold or distributed by a retailer or special one-time permittee to the exclusion, in whole or in part, of other brands of alcoholic beverages offered by competitors.

Statutory Authority G.S. 18B-105; 18B-207; 18B-1116.

SECTION .0900 - DISTILLERS:
REPRESENTATIVES

.0901 DISTILLER REPRESENTATIVES:
PROHIBITED ACTS

(a) Representatives Prohibited from Entering Store. Distiller representatives shall not enter any ABC store except for the purpose of calling on the buyer if the buyer's office is maintained in the store or for the purpose of making a purchase.

(b) Representatives Prohibited from Contacting Store Personnel. Distiller representatives shall not contact, either directly or indirectly, or call upon store personnel while store personnel are off duty for the purpose of promoting their merchandise. Store personnel shall share equally with the distiller representative responsibility of any infraction of this Rule.

(c) Gifts Prohibited. Representatives shall not give liquor or anything of value to store personnel at any time. Store personnel shall be equally as guilty as the representative if they accept gifts, either directly or indirectly, from any representative.

(d) Soliciting and Advertising Prohibited. Except for purchases made by state or local officials for supply of ABC stores, salesmen of spirituous ~~liquors~~ liquor shall not with regard to purchases of spirituous ~~liquors~~ liquor by any person:

- (1) solicit any order, agreement, or other commitment to purchase liquor, whether or not it is legally enforceable; or
- (2) advertise, promote or encourage purchases by any means or method or furnish any means by which spirituous ~~liquors~~ liquor may be obtained, except as provided in 4 NCAC 2S .1011 of this Chapter.

Exceptions may be made upon notification from the Commission to a distiller representative when there is expressed interest by a fraternal or civic group in the purchase of a ceramic or commemorative decanter. Upon notice, distiller representatives may present pictorial art work or renderings in solicitation and a presentation to that group.

(e) Relationship With Mixed Beverages Permittee. No employee or representative of any distiller, importer, rectifier or bottler may in any manner promote or solicit orders by a mixed beverages permittee or aid the permittee in placing orders for any spirituous liquor or for any other alcoholic beverages.

(f) Gifts and Inducements Prohibited. No employee or representative of any rectifier or industry member may give or lend to any mixed beverage permittee, or his employee any gift, money, services, equipment, furniture, fixture or other thing of value.

Statutory Authority G.S. 18B-207; 18B-1116.

TITLE 10 - DEPARTMENT OF HUMAN
RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 26B .0121.

The proposed effective date of this action is June 1, 1992.

The public hearing will be conducted at 1:30 p.m. on March 17, 1992 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, N.C. 27603.

Reason for Proposed Action: Private Duty Nursing (PDN) services are amended to include coverage criteria, service location, prohibition on service duplication and payment, and clarification on licensure and certification.

Comment Procedures: Written comments concerning this amendment must be submitted by March 17, 1992, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26B - MEDICAL ASSISTANCE
PROVIDED

SECTION .0100 - GENERAL

.0121 PRIVATE DUTY NURSING

(a) Medically necessary private duty nursing (PDN) services are provided when they are prescribed by a physician and prior approved by the Division of Medical Assistance or its agent-designee.

(b) Private duty nursing services are covered only when provided in the client's own home. A patient must reside in a private residence to receive PDN services. Recipients who are in

domiciliary care facilities (such as rest homes, group homes, family care homes, and similar settings) and those who are in hospitals, nursing facilities, intermediate care facilities for the mentally retarded, rehabilitation centers, and other institutional settings are not eligible for this service. PDN services are not covered while an individual is being observed or treated in a hospital emergency room or similar environment.

(c) Private duty nursing services are approvable when other Medicaid services, such as home health services, cannot adequately meet the needs of the client. considered medically necessary when the person must require substantial and complex continuous nursing care by a licensed nurse. Professional judgment and a thorough evaluation of the medical complexity and psychosocial needs of the patient are involved in determining the need for PDN. The following situations represent the usual types of cases that may require PDN, though the list is not meant to be all inclusive:

- (1) Patient requires prolonged intravenous nutrition or drug therapy with needs beyond those covered by home infusion therapy services.
- (2) Patient is dependent on a ventilator for prolonged periods.
- (3) Patient is dependent on other device-based respiratory support, including tracheostomy care, suctioning, and oxygen support.

(d) Medicaid payments for PDN are made only to agencies which are accredited in the provision of in-home nursing care by the Joint Committee on the Accreditation of Health Organizations (JCAHO), the National League for Nursing or who are state licensed and Medicare certified as a home health agency. This service is only approvable based on the need for PDN services in the patient's private residence. An individual with a medical condition that necessitates this service normally is unable to leave the home without being accompanied by a licensed nurse and leaving the home requires considerable and taxing effort. An individual may utilize the approved hours of coverage outside of his residence during those hours when the individual's normal life activities take the patient out of the home. The need for nursing care to participate in activities outside of the home is not a basis for authorizing PDN services or expanding the hours needed for PDN services.

(e) A person may not receive Personal Care Services, Skilled Nursing Visits, and Home Health Aide Services reimbursed by Medicaid

during the same hours of the day as PDN services.

(f) The patient's spouse, child, parent, grandparent, grandchild, or sibling, including corresponding step and in-law relationship may not be employed by the provider agency to provide PDN services to the patient when reimbursed by Medicaid.

(g) Medicaid payments for PDN are made only to agencies enrolled with the Division of Medical Assistance as providers for the service. An agency must be one of the following to be enrolled to provide this service:

- (1) A Medicare certified home health agency located within North Carolina.
- (2) A State licensed home health agency located within North Carolina.
- (3) An agency with a North Carolina office that is accredited in the provision of in-home nursing care by either the Joint Commission on Accreditation of Health Care Organizations (JCAHO) or the National League for Nursing (NLN).

Authority G.S. 108A-25(b); 108A-54; 42 C.F.R. 440.80.

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rules cited as 11 NCAC 8 .0801 - .0802, .0805, .0815 and adopted rules cited as 11 NCAC 8 .0819 - .0836.

The proposed effective date of this action is May 1, 1992.

The public hearing will be conducted at 1:00 p.m. on March 2, 1992 at the Code Officials Qualifications Board, 410 N. Boylan Avenue, Raleigh, N.C. 27611.

Reason for Proposed Action: To provide for rules for the conduct of hearings in accordance with G.S. 150B-38(h).

Comment Procedures: Written comments may be sent to Grover Sawyer, c/o Qualifications Board, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Grover Sawyer at (919) 733-3901 or Ellen Sprenkel at (919) 733-4529.

Editor's Note: These Rules have been filed as temporary rules effective March 3, 1992 for a period of 169 days to expire on August 21, 1992.

CHAPTER 8 - ENGINEERING AND BUILDING CODES

SECTION .0800 - DISCIPLINARY ACTIONS: OTHER CONTESTED MATTERS

.0801 DISCIPLINARY POWERS

(a) As used in this Section "Board" means the North Carolina Code Officials Qualification Board; "official" means a qualified Code-enforcement official as defined in G.S. 143-151.8(5); and "Code" means the North Carolina State Building Code.

(b) Any person who believes that an official is or has been in violation of G.S. 143-151.17(a) may file a complaint against that official. Copies of ~~11 NCAC 8 .0801~~ this Section and G.S. 143-151.17 shall be mailed to any person requesting complaint information from the Board.

(c) The complaint must specifically refer to one or more of the grounds in G.S. 143-151.17(a). The name of the official, if known, and the name of the local inspection department must be listed. If the official is unknown, the complaint must refer to "the inspector who performed the building (or electrical, mechanical, ~~or~~ plumbing or fire prevention) inspection."

(d) Supporting information must be included to justify the complaint. If the complaint involves violations of the Code that the official did not discover, a list of those violations must be submitted with the complaint. Such information may be provided by the complainant, an architect, professional engineer, licensed contractor, certified inspector, or other person with knowledge of the Code. Supporting information must refer to specific violations of the Code or of the General Statutes.

(e) The complaint must be in writing, signed by the complainant, and dated. The complaint must include the complainant's mailing address and a daytime phone number at which the complainant may be reached. The street address of the structure must be included. There must be a notarized verification at the end of the complaint.

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

.0802 PRELIMINARY INVESTIGATION

On receipt of a complaint conforming to 11 NCAC 8 .0801, the Board's staff shall make an

investigation of the charges. If the staff ~~reports~~ determines that the charges appear to have no basis in fact, the ~~Board shall so notify the person filing the complaint.~~ staff shall, in writing:

- (1) advise the complainant in writing that the charges appear to have no basis in fact;
- (2) state the reasons for its determination;
- (3) advise the complainant that the complainant is entitled to a hearing before a committee of Board members, to be appointed by the chairman of the Board, to determine whether the finding of the staff is correct; and
- (4) advise the complainant that the complainant must make a written request for the hearing and must state in the request the reasons why the complainant is of the opinion the staff's determination is incorrect.

If the complainant makes a written request for a hearing in accordance with this Rule, the committee shall fix a time and place for the hearing and notify the complainant. If the person filing the complaint then requests a formal hearing of the charges, or if the staff reports or the committee finds that the charges may have some basis in fact, the Board shall fix a time and place for a hearing and give notice to the parties: complainant and to the official.

Statutory Authority G.S. 143-151.12(1); 143-151.17(b); 150B-38(h).

.0805 HEARING OFFICER

In all contested case hearings before the Board, the Chairman of the Board shall serve as presiding officer. In the absence of the Chairman, the Vice-Chairman shall serve as presiding officer, or a presiding officer shall be elected by the Board.

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

.0815 FINAL BOARD ORDER

(a) If after the close of a contested case hearing the Board decides that an official's conduct does not justify the suspension or revocation of his certificate but that his conduct does fail to conform to the standards of good code enforcement practice, the Board may issue a letter of reprimand or a letter of caution to the official in which the Board may summarize those deficiencies and make appropriate recommendations.

(b) If a final board order is to suspend, revoke, or refuse to issue a certificate, the order shall set forth the conditions, if any, that must be met in order to remove the suspension, to re-issue the certificate, or to issue the certificate.

Statutory Authority G.S. 143-151.12(1); 143-151.17(c); 150B-38(h).

.0819 GENERAL

Governed by the principles of fairness, uniformity, and punctuality, the following general rules apply:

- (1) The Rules of Civil Procedure as contained in G.S. 1A-1, the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes apply in contested cases before the Board unless another specific statute or rule of the Board provides otherwise.
- (2) The Board may supply, at the cost of reproduction, forms for use in contested cases.
- (3) Every document filed with the hearing officer or the Board shall be signed by the attorney who prepared the document, if it was prepared by an attorney, and shall contain his name, address, telephone number, and North Carolina State Bar number. An original and one copy of each document shall be filed.
- (4) Except as otherwise provided by statute, the rules contained in this Section govern the conduct of contested case hearings under G.S. 143-151.17.
- (5) The content and the manner of service of the notice of hearing shall be as specified in G.S. 150B-38(b) and (c).
- (6) Venue in a contested case shall be determined in accordance with G.S. 150B-38(e).
- (7) Hearings shall be conducted, as nearly as practical, in accordance with the practice in the Trial Division of the General Court of Justice.
- (8) Ex parte communications in a contested case are governed by G.S. 150B-40(d).
- (9) This Section and copies of all matter adopted by reference herein are available from the Board at the cost established in 11 NCAC 1.0103.
- (10) The rules of statutory construction contained in Chapter 12 of the General Statutes apply in the construction of this Section.
- (11) Unless otherwise provided in the rules of the Board or in a specific statute, time computations in contested cases before the Board are governed by G.S. 1A-1, Rule 6.

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

.0820 DEFINITIONS

The definitions contained in G.S. 150B-2 are incorporated herein by reference. In addition to

the definitions in 11 NCAC 8.0801(a), the following definitions apply to this Section:

- (1) "File or filing" means to place the paper or item to be filed into the care and custody of the hearing officer, and acceptance thereof by him, except that the Board may permit the papers to be filed with the Board, in which event the Board shall note thereon the filing date. All documents filed with the hearing officer or the Board, except exhibits, shall be duplicate in letter size 8 1/2" by 11".
- (2) "Hearing officer" means the presiding officer specified in 11 NCAC 8.0805.
- (3) "Party" means the Board, the official, or an intervenor who qualifies under 11 NCAC 8.0831. "Party" does not include a complainant unless the complainant is allowed to intervene under 11 NCAC 8.0831.
- (4) "Service or serve" means personal delivery or, unless otherwise provided by law or rule, delivery by first class United States Postal Service mail or a licensed overnight express mail service, postage prepaid and addressed to the person to be served at his or her last known address. A Certificate of Service by the person making the service shall be appended to every document requiring service under these Rules. Service by mail or licensed overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United State Postal Service upon deliver, postage prepaid and wrapped in a wrapper addressed to the person to be served, to an agent of the overnight express mail service.

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

.0821 ORDER FOR PREHEARING STATEMENTS

The hearing officer may serve all parties with an order for prehearing statements together with, or after service of, the notice of hearing. Every party thus served shall, within 30 days after service, file the requested statements setting out the party's present position on the following:

- (1) The nature of the proceeding and the issues to be resolved;
- (2) A brief statement of the facts and reasons supporting the party's position on each matter in dispute;
- (3) A list of proposed witnesses with a brief description of his or her proposed testimony;
- (4) A description of what discovery, if any, the party will seek to conduct prior to the con-

tested case hearing and an estimate of the time needed to complete discovery;

- (5) Venue considerations;
- (6) Estimation of length of the hearing;
- (7) The name, address, and telephone number of the party's attorney, if any; and
- (8) Other special matters.

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

.0822 DUTIES OF THE HEARING OFFICER

In conjunction with the powers in this Section and in G.S. 143-151.17, the hearing officer shall perform the following duties, consistent with law:

- (1) Hear and rule on motions;
- (2) Grant or deny continuances;
- (3) Issue orders regarding prehearing matters, including directing the appearance of the parties at a prehearing conference;
- (4) Examine witnesses when deemed to be necessary to make a complete record and to aid in the full development of material facts in the case;
- (5) Make preliminary, interlocutory, or other orders as deemed to be appropriate;
- (6) Recommended a summary disposition of the case or any part thereof when there is no genuine issue as to any material fact or recommend dismissal when the case or any part thereof has become moot or for other reasons; and
- (7) Apply sanctions in accordance with 11 NCAC 8 .0829.

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

.0823 CONSENT ORDER; SETTLEMENT; STIPULATION

Informal disposition may be made of a contested case or an issue in a contested case by stipulation, agreement, or consent order at any time during the proceedings. Parties may enter into such agreements on their own or may ask for a settlement conference with the hearing officer to promote consensual disposition of the case.

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

.0824 SETTLEMENT CONFERENCE

(a) A settlement conference is for the primary purpose of assisting the parties in resolving disputes and for the secondary purpose of narrowing the issues and preparing for hearing.

(b) Upon the request of any party, the hearing officer shall assign the case to another Board

member for the purpose of conducting a settlement conference. Unless the parties and the other Board member agree, a unilateral request for a settlement conference does not constitute good cause for a continuance. The conference shall be conducted at a time and place agreeable to all parties and the hearing officer. It shall be conducted by telephone if any party would be required to travel more than 50 miles to attend, unless that party agrees to travel to the location set for the conference. If a telephone conference is scheduled, the parties must be available by telephone at the time of the conference.

(c) All parties shall attend or be represented at a settlement conference. Parties or their representatives shall be prepared to participate in settlement discussions.

(d) The parties shall discuss the possibility of settlement before a settlement conference if they believe that a reasonable basis for settlement exists.

(e) At the settlement conference, the parties shall be prepared to provide information and to discuss all matters required in 11 NCAC 8 .0821.

(f) If, following a settlement conference, a settlement has not been reached but the parties have reached an agreement on any facts or other issues, the Board member presiding over the settlement conference shall issue an order confirming and approving, if necessary, those matters agreed upon. The order is binding on the hearing officer who is assigned to hear the case.

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

.0825 PREHEARING CONFERENCE

(a) The purpose of the prehearing conference is to simplify the issues to be determined; to obtain stipulations in regard to foundations for testimony or exhibits; to obtain stipulations of agreement on nondisputed facts or the application of particular laws; to consider the proposed witnesses for each party; to identify and exchange documentary evidence intended to be introduced at the hearing; to determine deadlines for the completion of any discovery; to establish hearing dates and locations if not previously set; to consider such other matters that may be necessary or advisable; and, if possible, to reach a settlement without the necessity for further hearing. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record.

(b) Upon the request of any party or upon the hearing officer's own motion, the hearing officer may hold a prehearing conference before a contested case hearing. The hearing officer may re-

quire the parties to file prehearing statements in accordance with 11 NCAC 8 .0821. A prehearing conference on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the hearing officer. Venue for purposes of a prehearing conference shall be determined in accordance with G.S. 150B-38(e).

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

.0826 CONSOLIDATION OF CASES

(a) The hearing officer may order a joint hearing of any matters at issue in contested cases involving common questions of law or fact or multiple proceedings involving the same or related parties, or may order the cases consolidated or make other orders to reduce costs or delay in the proceedings.

(b) A party requesting consolidation shall serve a petition for consolidation on all parties to the cases to be consolidated and shall file the original with the hearing officer, together with a certificate of service showing service on all parties as herein required. Any party objecting to the petition shall serve and file his objections within 10 days after service of the petition for consolidation.

(c) Upon determining whether cases should be consolidated, the hearing officer shall serve a written order on all parties that contains a description of the cases for consolidation and the reasons for the decision.

(d) Nothing contained in this Rule prohibits the parties from stipulating and agreeing to a consolidation, which shall be granted upon submission of a written stipulation, signed by every party, to the hearing officer.

(e) Following receipt of a notice of or order for consolidation, any party may petition for severance by serving it on all other parties and filing with the hearing officer at least seven days before the first scheduled hearing date. If the hearing officer finds that the consolidation will prejudice any party, he shall order the severance or other relief that will prevent the prejudice from occurring.

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

.0827 DISCOVERY

(a) Discovery methods are means designed to assist parties in preparing to meet their responsibilities and protect their rights during hearings without unduly delaying, burdening or complicating the hearings process and with due regard to the rights and responsibilities of other parties

and persons affected. Accordingly, parties are obligated to exhaust all less formal opportunities to obtain discoverable material before utilizing this Rule.

(b) Any means of discovery available pursuant to the North Carolina Rules of Civil Procedure, G.S. 1A-1, is allowed. If the party from whom discovery is sought objects to the discovery, the party seeking the discovery may file a motion with the hearing officer to obtain an order compelling discovery. In the disposition of the motion, the party seeking discovery shall have the burden of showing that the discovery is needed for the proper presentation of the party's case, is not for purposes of delay, and that the issues in controversy are significant enough to warrant the discovery. In ruling on a motion for discovery, the hearing officer shall recognize all privileges recognized at law.

(c) When a party serves another party with a request for discovery, that request need not be filed with the hearing officer but shall be served upon all parties.

(d) The parties shall immediately commence to exchange information voluntarily, to seek access as provided by law to public documents, and to exhaust other informal means of obtaining discoverable material.

(e) All discovery shall be completed no later than the first day of the hearing. The hearing officer may shorten or lengthen the period for discovery and adjust hearing dates accordingly and, when necessary, allow discovery during the pendency of the hearing.

(f) No later than 15 days after receipt of a notice requesting discovery, the receiving party shall:

- (1) move for relief from the request;
- (2) provide the requested information, material or access; or
- (3) offer a schedule for reasonable compliance with the request.

(g) Sanctions for failure of a party to comply with an order of the hearing officer made pursuant to this Rule shall be as provided for by G.S. 1A-1, Rule 37, to the extent that an hearing officer may impose such sanctions, and 11 NCAC 8 .0829.

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

.0828 SUBPOENAS

(a) Subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall be issued in accordance with G.S. 150B-39(c) and G.S. 1A-1 Rule 45.

(b) A subpoena shall be served in the manner provided by G.S. 150B-39(c) and G.S. 1A-1, Rule 45. The cost of service, fees, and expenses of any witnesses subpoenaed shall be paid by the party at whose request the witness appears. A party seeking an order imposing sanctions for failure to comply with any subpoena issued under this Rule must prove proper service of the subpoena.

(c) Objections to subpoenas shall be heard in accordance with G.S. 150B-39(c) and G.S. 1A-1, Rule 45.

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

.0829 SANCTIONS

(a) If a party fails to appear at a hearing or fails to comply with an interlocutory order of the hearing officer, the hearing officer may:

- (1) Find that the allegations of or the issues set out in the notice of hearing or other pleading may be taken as true or deemed to be proved without further evidence;
- (2) Dismiss or grant the motion or petition;
- (3) Suppress a claim or defense; or
- (4) Exclude evidence.

(b) In the event that any party, attorney at law, or other representative of a party engages in behavior that obstructs the orderly conduct of proceedings or would constitute contempt if done in the General Court of Justice, the hearing officer may enter a show cause order returnable in Superior Court for contempt proceedings in accordance with G.S. 150B-40(c)(6).

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

.0830 MOTIONS

(a) Any application to the hearing officer for an order shall be by motion, which shall be in writing unless made during a hearing, and must be filed and served upon all parties not less than 10 days before the hearing, if any, is to be held either on the motion or the merits of the case. The nonmoving party has 10 days after the date of service of the motion to file a response, which must be in writing. Motions practice in contested cases before the Board is governed by Rule 6 of the General Rules of Practice for the Superior and District Court.

(b) If any party desires a hearing on the motion, he shall make a request for a hearing at the time of the filing of his motion or response. A response shall set forth the nonmoving party's objections. All motions in writing shall be decided without oral argument unless an oral argu-

ment is directed by the hearing officer. When oral argument is directed by the hearing officer, a motion shall be considered submitted for disposition at the close of the argument. A hearing on a motion will be directed by the hearing officer only if it is determined that a hearing is necessary to the development of a full and complete record on which a proper decision can be made. All orders on such motions, other than those made during the course of a hearing, shall be in writing and shall be served upon all parties of record not less than five days before a hearing, if any, is held.

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

.0831 INTERVENTION

(a) Any person not named in the notice of hearing who desires to intervene in a contested case as a party shall file a timely motion to intervene and shall serve the motion upon all existing parties. Timeliness will be determined by the hearing officer in each case based on circumstances at the time of filing. The motion shall show how the movant's rights, duties, or privileges may be determined or affected by the contested case; shall show how the movant may be directly affected by the outcome or show that the movant's participation is authorized by statute, rule, or court decision; shall set forth the grounds and purposes for which intervention is sought; and shall indicate movant's statutory right to intervene if one exists.

(b) Any party may object to the motion for intervention by filing a written notice of objections with the hearing officer within five days after service of the motion if there is sufficient time before the hearing. The notice of objection shall state the party's reasons for objection and shall be served upon all parties. If there is insufficient time before the hearing for a written objection, the objection may be made at the hearing.

(c) When the hearing officer deems it to be necessary to develop a full record on the question of intervention, he may conduct a hearing on the motion to determine specific standards that will apply to each intervenor and to define the extent of allowed intervention.

(d) The hearing officer shall allow intervention upon a proper showing under this Rule, unless he finds that the movant's interest is adequately represented by one or more parties participating in the case or unless intervention is mandated by statute, rule, or court decision. An order allowing intervention shall specify the extent of participation permitted the intervenor and shall state

the hearing officer's reason. An intervenor may be allowed to:

- (1) File a written brief without acquiring the status of a party;
- (2) Intervene as a party with all the rights of a party; or
- (3) Intervene as a party with all the rights of a party but limited to specific issues and to the means necessary to present and develop those issues.

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

.0832 CONTINUANCES

(a) A request for a continuance of a hearing shall be granted upon a showing of good cause. Unless time does not permit, a request for a continuance of a hearing shall be made in writing to the hearing officer and shall be served upon all parties of record. In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to proceed effectively without a continuance. A request for a continuance filed within five days before a hearing shall be denied unless the reason for the request could not have been ascertained earlier.

(b) "Good cause" includes death or incapacitating illness of a party, representative, or attorney of a party; a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleadings requiring postponement; and agreement for a continuance by all parties if either more time is clearly necessary to complete mandatory preparation for the case, such as authorized discovery, and the parties and the hearing officer have agreed to a new hearing date or the parties have agreed to a settlement of the case that had been or is likely to be approved by the final decision maker.

(c) "Good cause" does not include: intentional delay; unavailability of counsel or other representative because of engagement in another judicial or administrative proceeding unless all other members of the attorney's or representative's firm familiar with the case are similarly engaged, or if the notice of the other proceeding was received subsequent to the notice of the hearing for which the continuance is sought; unavailability of a witness if the witness' testimony can be taken by deposition; or failure of the attorney or representative to properly utilize the statutory notice period to prepare for the hearing.

(d) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the hearing officer shall either order the additional testimony taken by deposition or continue the hearing to a future date for which oral notice on the record is sufficient.

(e) A continuance shall not be granted if granting it would prevent the case from being concluded within any statutory or regulatory deadline.

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

.0833 RIGHTS AND RESPONSIBILITIES OF PARTIES

(a) A party has the right to present evidence, rebuttal testimony, and argument with respect to the issues of law and policy, and to cross-examine witnesses, including the author of a document prepared by, on behalf of, or for use of the Board and offered in evidence.

(b) A party shall have all evidence to be presented, both oral and written, available on the date for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their needs become evident to the requesting party. In cases when the hearing time is expected to exceed one day, the parties shall be prepared to present their evidence at the date and time ordered by the hearing officer or agreed upon at a prehearing conference.

(c) The hearing officer shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the hearing officer shall simultaneously send a copy to all other parties.

(d) All parties have the continuing responsibility to notify the hearing officer of their current address and telephone number.

(e) A party need not be represented by an attorney. If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney.

(f) With the approval of the hearing officer, any person may offer testimony or other evidence relevant to the case. Any nonparty offering testimony or other evidence may be questioned by parties to the case and by the hearing officer.

(g) Before issuing a recommended decision, the hearing officer may order any party to submit proposed findings of fact and written arguments.

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

.0834 WITNESSES

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation and shall be recorded. At the request of a party or upon the hearing officer's own motion, the hearing officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

.0835 EVIDENCE

(a) The North Carolina Rules of Evidence as found in Chapter 8C of the General Statutes govern in all contested case proceedings, except as provided otherwise in this Section and G.S. 150B-41.

(b) The hearing officer may admit all evidence that has probative value. Irrelevant, incompetent, immaterial, or unduly repetitious evidence shall be excluded. The hearing officer may, in his discretion, exclude any evidence if its probative value is substantially outweighed by the risk that its admission will require undue consumption of time or create substantial danger of undue prejudice or confusion.

(c) Contemporaneous objections by a party or a party's attorney are not required in the course of a hearing to preserve the right to object to the consideration of evidence by the hearing officer in reaching a decision or by the court upon judicial review.

(d) All evidence to be considered in the case, including all records and documents or true and accurate photocopies thereof, shall be offered and made a part of the record in the case. Except as provided in Paragraph (f) of this Rule, factual information or evidence that is not offered shall not be considered in the determination of the case. Documentary evidence incorporated by reference may be admitted only if the materials so incorporated are available for examination by the parties.

(e) Documentary evidence in the form of copies or excerpts may be received in the discretion of the hearing officer or upon agreement of the parties. Copies of a document shall be received to the same extent as the original document unless a genuine question is raised about the accuracy or authenticity of the copy or, under the circumstances, it would be unfair to admit the copy instead of the original.

(f) The hearing officer may take notice of judicially cognizable facts by entering a statement of the noticed fact and its source into the record. Upon a timely request, any party shall be given the opportunity to contest the facts so noticed through submission of evidence and argument.

(g) A party may call an adverse party; or an officer, director, managing agent, or employee of the State or any local government, of a public or private corporation, or of a partnership or association or body politic that is an adverse party; and may interrogate that party by leading questions and may contradict and impeach that party on material matters in all respects as if that party had been called by the adverse party. The adverse party may be examined by that party's counsel upon the subject matter of that party's examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by the testimony.

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

.0836 OFFICIAL RECORD

(a) The official record of a contested case is available for public inspection upon reasonable request. The hearing officer may, upon good cause shown and consistent with law, order part or all of an official record sealed.

(b) The official record shall be prepared in accordance with G.S. 150B-42.

(c) Contested case hearings shall be recorded either by a recording system or a professional court reporter using stenomask or stenotype.

(d) Transcript costs incurred by the Board shall be apportioned equally among the party(ies) requesting a transcript.

(e) Any other costs incurred by the Board when using a professional court reporter shall be apportioned equally among the requesting party(ies).

(f) A 24-hour cancellation notice is required in all cases. The party(ies) responsible for the cancellation shall be liable for any cancellation fees.

(g) Transcripts of proceedings during which oral evidence is presented will be made only upon request of a party. Transcript costs shall include the cost of an original for the Board. An attorney requesting a transcript on behalf of a party is a guarantor of payment of the cost. Cost shall be determined under supervision of the hearing officer who, in cases deemed to be appropriate by him, may require an advance security deposit to cover the prospective cost. The security deposit shall be applied to the actual cost and any

excess shall be returned to the party that submitted it.

(h) Copies of tapes are available upon written request at a cost of five dollars (\$5.00) per tape.

(i) Copies of Board hearings tapes or Non-Board certified transcripts therefrom are not part of the official record.

Note: Rule 5.3(B) of the Rules of Professional Conduct permits an attorney to advance or guarantee expenses of litigation provided the client remains ultimately liable for such expenses.

Statutory Authority G.S. 143-151.12(1); 143-151.17; 150B-38(h).

TITLE 13 - DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Labor intends to adopt rule(s) cited as 13 NCAC 15 .0429 and amend rule(s) cited as 13 NCAC 15 .0201 - .0206, .0302 - .0303, .0402 - .0404, .0406, .0413 - .0414, .0420 and .0424.

The proposed effective date of this action is May 1, 1992.

The public hearing will be conducted at 2:00 p.m. on March 2, 1992 at the Highway Building, Auditorium, 1st Floor, 1 S. Wilmington Street, Raleigh, NC.

Reason for Proposed Action: This action will incorporate the current national codes governing devices and equipment within the jurisdiction of the Elevator and Amusement Device Division as rules of the division and provides for the automatic adoption of subsequent editions and revisions. Other changes are made in rules dealing with elevators and amusement devices including the adoption of a new rule dealing with go karts.

Comment Procedures: People wanting to present oral testimony at the hearing should provide a written summary of the proposed testimony to the department by February 26, 1992. Written comments will be accepted by the department until March 15, 1992. Direct all correspondence to Bobby Bryan, NC Department of Labor, 4 W. Edenton Street, Raleigh, NC 27601.

CHAPTER 15 - ELEVATOR AND AMUSEMENT DEVICE DIVISION

SECTION .0200 - CODES AND STANDARDS

.0201 ELEVATOR SAFETY CODE

(a) The design, construction, installation, alteration, repair, replacement, inspection, maintenance and operation of all new installations of elevators, dumbwaiters, escalators, moving walks, inclined stairway chairlifts, and inclined and vertical wheelchair lifts shall conform to these Rules and the American National Standard Safety Code for Elevators and Escalators, A17.1-1984 with addenda A17.1a-1985, A17.1b-1985 and A17.1c-1986 A17.1-1990 which is hereby adopted incorporated by reference subject to the modifications provided in (b) of this Rule. This incorporation includes subsequent amendments and editions of this Code.

(b) The provisions of the American National Standard Safety Code for Elevators and Escalators, A17.1 shall be subject to the following modifications:

- (1) Rule 100.1c(2) -- Observation Elevators Not Fully Enclosed. Change the rule to read as follows: For observation elevators which are not fully enclosed, protection at landings shall be provided as follows:
 - (A) An enclosure shall be provided which shall extend a minimum of ten feet above the floor.
 - (B) The enclosure shall be constructed of unperforated material.
 - (C) Enclosures shall be located in the general line of the hoistway. Horizontal clearance shall be the same as stated in Section 108.
- (2) ~~Rule 110.2a -- For Passenger Elevators and Freight Elevators Authorized to Carry Passengers.~~
 - ~~(A) Delete from the title the words: "and freight elevators authorized to carry passengers."~~
 - ~~(B) Delete items (4) and (5) of the contents.~~
- (3) Rule 111.10 -- Access to Hoistways for Emergency Purposes. In the first sentence change the word "may" to "shall."
- (4) Rule 204.2d -- Side Emergency Exits. Side emergency exits shall not be permitted in elevator cars.
- (5) Rule 300.3d -- Top Car Clearance. Change the rule to read as follows: The top car clearance shall be not less than the sum of the following two items:
 - (A) the top car runby;
 - (B) the largest of the following:
 - (i) Two feet (610 mm) above the car crosshead where a crosshead is provided;
 - (ii) In no case shall there be less than two feet clearance (610 mm) above the car crosshead when the car has reached its maximum upward movement.

(c) The rules of this Chapter shall control when any conflict between these rules and the ANSI Code exists.

(d) Copies of the American National Standard Safety Code for Elevators and Escalators are available for public inspection in the office of the division, and may be obtained from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017. The cost is ~~seventy five dollars (\$75.00)~~ ninety six dollars (\$96.00) per copy. ~~for non-ASME members and sixty dollars (\$60.00) for members.~~

Statutory Authority G.S. 95-110.5.

**.0202 EXISTING INSTALLATIONS,
ALTERATIONS AND EXCEPTIONS**

(a) Existing Installations. Existing installations of elevators, escalators, dumbwaiters, and moving walks shall be maintained under the departmental standards (if any) in effect at the time of their installation. Existing installations shall also meet the following standards whether or not there were departmental standards in effect at the time of their installation:

- (1) Electrically-powered elevator driving machines shall be equipped with a friction brake applied by a spring or springs or by gravity and released electrically.
- (2) The car of every elevator suspended by wire ropes shall be provided with one or more safety devices. The safeties shall be attached to the car frame and one safety shall be located within or below the lowest members of the car frame (safety plant). All safeties shall be designed and installed in accordance with Section 205 of the Elevator Safety Code, unless otherwise approved by the director.
- (3) Operating devices for electrically-powered or electrically-controlled elevators shall be of the enclosed electric type. Rope or rod operating devices activated directly by hand, or rope operating devices activated by wheels, levers or cranks shall not be used.
- (4) Elevator hoistways shall be enclosed throughout their height and all hoistway landing openings shall be protected with doors or gates. Hoistway enclosures shall be constructed to have a fire resistive rating of not less than one hour.
- (5) Hoistway enclosure doors or gates shall be equipped with electric interlocks.
- (6) Each elevator car shall be permanently enclosed on all sides and the top, except the sides for entrance and exit. Car side

enclosures shall be of such strength and so designed and installed that when subjected to a pressure of 75 pounds applied horizontally at any point on the walls of the enclosure, the deflection will not exceed one inch.

- (7) Car top enclosures shall be so designed and installed as to be capable of sustaining a load of not less than 100 pounds at any one point.
- (8) An emergency exit with a cover shall be provided in the top of all elevator cars. The exit opening shall have an area of not less than 400 square inches and shall not measure less than 16 inches on any side. The exit shall be so located as to provide a clear unobstructed passage through it. The exit cover shall open outward and be hinged or otherwise attached to the car top and arranged to be opened from the top of the car only.
- (9) A door or gate shall be provided at each entrance to the car.
- (10) Doors shall be of the horizontally or vertically sliding type. Gates shall be of the vertically sliding or horizontally sliding collapsible type located not more than 1-3/4 inches from the car sill. Gates shall extend from a point not less than one inch above the car floor to not less than six feet above the car floor.
- (11) Vertically sliding gates when in the fully opened position shall provide an entrance of not less than six feet in height. Such gates shall be provided with pull straps to facilitate closing of the gate.
- (12) Each car door shall be equipped with a car door or gate electric contact so located as to be inaccessible from inside the car door and shall stop the car when the gate is opened a maximum of two inches.

The completion of any of the items in Subparagraphs (1) through (12) of Paragraph (a) of this Rule that increases the gross load of the elevator shall not reduce the safety factor of the driving machine below that required by rule 208.3 of A17.1, the American National Standard Safety Code for Elevators and Escalators.

(b) Exceptions. Existing elevators in warehouses of not more than two floors that are not accessible to the general public are exempt from ~~Subdivisions~~ Subparagraphs (4) through (12) of Paragraph (a) of this Rule providing that all of the following conditions are met:

- (1) The warehouse shall be used solely for the purpose of storing materials and products.
- (2) Hoistways shall be provided with adequate guards as approved by the director.

- (3) All capabilities of operating the elevator from the car or platform shall be removed.
- (4) Riders shall not be permitted to ride the car or platform.
- (5) A sign stating "Absolutely No Riders Permitted" in letters no less than one inch high on a contrasting background shall be posted at each entrance to the elevator.

(c) If an existing installation meets the requirements of Paragraph (a) of this Rule, it shall be issued a regular certificate of operation pursuant to Rule .0306 of this Chapter. If an existing installation is maintained under the departmental standards (if any) in effect at the time of its installation and is not exposing the public to an unsafe condition likely to result in serious personal injury or property damage, but does not meet the twelve standards specifically set out in Paragraph (a) of this Rule, it shall be issued a certificate of operation containing the following statement:

"Warning: This elevator has been inspected and found to be in a reasonably safe condition; however, it is not equipped with some of the safety features now required by the Department of Labor."

If the existing installation is not in compliance with the requirements of Paragraph (a) of this Rule by January 1, 1991, the following sign in letters no less than one inch high on a contrasting background shall be posted within and at each entrance to the elevator:

"Riders prohibited -- only a trained operator may ride this elevator."

(d) Units of existing installations which are out-of-service and not continuously maintained for a period exceeding one year shall be properly landed by complying with the following:

- (1) Land both car and counterweight (if any) at the bottom of the hoistway. Elevators of the roped type shall have their hoist ropes disconnected at both ends.
- (2) All electric power shall be removed by disconnecting and removing the power feeders.
- (3) All hoistway entrances shall be permanently secured to prevent accidental or inadvertent entry into the hoistway.

Any elevator, dumbwaiter, escalator or moving walk that has been properly landed or otherwise removed from service for a period exceeding one year shall comply with the requirements of the elevator safety code in effect at the time they are returned to service.

(e) Existing installations of elevators, escalators, dumbwaiters or moving walks altered in accordance with Part XII of ANSI ASME

A17.1-1990 after May 1, 1992, shall conform to the American National Standard Safety Code for Existing Elevators and Escalators, ANSI/ASME A17.3-1990 which is hereby incorporated by reference. This incorporation includes subsequent amendments and editions of this Code. Copies of the American National Standard Safety Code for Existing Elevators and Escalators may be obtained from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017. The cost is forty-seven dollars (\$47.00) per copy.

Statutory Authority G.S. 95-110.5.

.0203 SAFETY STANDARD FOR MANLIFTS

(a) The design, construction, installation, alteration, repair, replacement, inspection, maintenance and operation of all manlifts shall conform to these Rules and the American National Standard Safety Standard for Manlifts, A90.1-1976 A90.1-1985 which is hereby adopted incorporated by reference. This incorporation includes subsequent amendments and editions of this Code.

(b) The rules of this Chapter shall control when any conflict between these rules and the ANSI Code exists.

(c) Copies of the American National Standard Safety Standard for Manlifts are available for inspection at the offices of the division and may be obtained from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017 at a cost of ~~six dollars (\$6.00)~~ thirty dollars (\$30.00) per copy. ~~for non-members and four dollars and eighty cents (\$4.80) for members.~~

Statutory Authority G.S. 95-110.5.

.0204 PERSONNEL HOISTS CODE

(a) The design, construction, installation, alteration, repair, replacement, inspection and operation of all personnel hoists shall conform to these Rules and the American National Standard Safety Requirements for Personnel Hoists, A10.4-1981 which is hereby adopted incorporated by reference. This incorporation includes subsequent amendments and editions of this Code.

(b) The rules of this Chapter shall control when any conflict between these rules and the ANSI Code exists.

(c) Copies of the American National Standard Safety Requirements for Personnel Hoists are available for inspection at the offices of the division and may be obtained from the American National Standard Institute, Inc., 1430

Broadway, New York, New York 10018 at a cost of ~~ten dollars (\$10.00)~~ eighteen dollars (\$18.00) per copy.

Statutory Authority G.S. 95-110.5.

.0205 TRAMWAY REQUIREMENTS

The construction, operation and maintenance of passenger tramways shall conform to the American National Standards Safety Requirements for Aerial Passenger Tramways, B77.1-1982 as supplemented by B77.1a-1986 which is hereby ~~adopted~~ incorporated by reference. Copies of the requirements are available for inspection at the office of the division and may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018 at a price of ~~twelve dollars (\$12.00)~~ thirty five dollars (\$35.00) per copy. This incorporation includes subsequent amendments and editions of this Code.

Statutory Authority G.S. 95-120.

.0206 NATIONAL ELECTRICAL CODE

(a) All devices and equipment subject to this Chapter shall be designed, constructed, installed, maintained and operated in accordance with these Rules and the requirements of the ~~1987~~ 1990 edition of the National Electrical Code, NFPA ~~70-1987~~ 70-1990 which is hereby ~~adopted~~ incorporated by reference. This incorporation includes subsequent amendments and editions of this Code.

(b) The rules of this Chapter shall control when any conflict between these rules and the National Electrical Code exists.

(c) Copies of the National Electrical Code are available for inspection in the offices of the division and may be obtained from the State Board of Examiners of Electrical Contractors, 1200 Front Street, Suite 105, P. O. Box 18727, Raleigh, NC 27619 at a cost of fourteen dollars (\$14.00) per copy at the office or fifteen dollars (\$15.00) per copy if mailed.

Statutory Authority G.S. 95-110.5; 95-111.4; 95-120.

SECTION .0300 - ELEVATORS AND RELATED EQUIPMENT

.0302 RESPONSIBILITY

Responsibility for the installation, alteration, operation, maintenance, and reporting of accidents for elevators, dumbwaiters, escalators, moving walks, personnel hoists, and special equipment shall be as follows:

- (1) The equipment manufacturer shall be responsible for designing and manufacturing equipment in compliance with the applicable code.
- (2) The person or firm installing or altering elevators, dumbwaiters, escalators, moving walks, personnel hoists, and special equipment shall be responsible for obtaining all permits and approvals. He shall be responsible for the safe operation of equipment during the installation until a certificate of operation has been issued and for conducting all tests required by these rules.
- (3) The owner, his duly appointed agent, or the lessee shall be responsible for the safe operation and proper maintenance of elevators, dumbwaiters, escalators, moving walks, personnel hoists, and special equipment after the installation has been approved and a certificate has been issued. He shall be responsible for conducting all periodic or maintenance tests required by these rules.
- (4) The owner shall also be responsible for having elevators in closed buildings inspected by North Carolina Department of Labor inspectors. The owner or agent shall contact the Elevator and Amusement Device Division to arrange a convenient time for inspection. Elevators not inspected shall be considered as being removed from service.

Statutory Authority G.S. 95-110.5.

.0303 CONSTRUCTION PERMITS

(a) Before erecting or constructing a new elevator, dumbwaiter, workman's hoist, escalator, moving walk, stairway inclined lift, or vertical wheelchair lift, or before moving such an apparatus from one location to another, or before making alterations to existing equipment, the owner or his authorized agent shall obtain a permit from the director. The owner or his authorized agent shall submit an application for a permit accompanied by duplicate plans and drawings showing the proposed construction, type of equipment and mode of operation. The application to install which consists of the original and three copies shall include the following information:

- (1) name and address of architect, owner, and installer;
- (2) type and design of equipment;
- (3) pertinent information as to the location of the equipment and such specifications as required by the Elevator Safety Code.
- (4) ~~a permit from the local building inspector that the planned stairway inclined lift or vertical wheelchair lift will not hinder~~

~~egress or ingress from the building required by the North Carolina Building Code. If no local building inspector is available, the permit must be obtained from the engineering division of the North Carolina Department of Insurance.~~

(b) Upon finding that the application is in compliance with the regulations of this Chapter, the director will issue a permit, subject to final field inspection.

(c) The permit shall be posted in a conspicuous place on the job site prior to the start of any work to be done.

(d) Upon receiving information indicating violation of this Rule, the director may cause the stoppage of all work on that job until a hearing, pursuant to the provisions of the Administrative Procedure Act, N.C. General Statutes, Chapter 150B Article 3 can be held to determine the reason for the violation.

(e) The operation or use of any new, altered, or relocated equipment subject to the Elevator Safety Code other than by the installer acting under the authority of a construction permit is prohibited until such equipment has passed tests and inspections as required by Rule .0305 of this Section and a certificate to this effect has been issued in accordance with Rule .0306 of this Section.

Statutory Authority G.S. 95-110.5.

SECTION .0400 - AMUSEMENT DEVICES

.0402 RESPONSIBILITY FOR COMPLIANCE

(a) Every owner or operator of an amusement device shall comply with or affect compliance with all provisions of the rules of this Section, and every employer and employee shall comply with all provisions which concern or affect his conduct.

(b) Designers and manufacturers of amusement devices shall follow the procedures of the Standard Practice for The Design Manufacture of Amusement Rides and Devices ASTM F 1159 in the manufacture of all rides. An engineering analysis of each ride or device shall be submitted to the North Carolina Department of Labor, Elevator and Amusement Device Division, before it is operated in North Carolina.

Statutory Authority G.S. 95-111.4.

.0403 LOAD TESTS

(a) Test Required. Load tests will not be required on a regular basis. The director may, however, at his discretion require a load test to be made on devices of the following types:

- (1) devices having suspended passenger seats or spaces,
- (2) devices normally operated at speeds or with movements creating severe centrifugal forces,
- (3) devices so elevated that structural failure is likely to cause passengers to be injured by falling, or
- (4) devices on which the director has ordered such a test upon finding it necessary to assure safety.

(b) Evidence of Test. Unless a load test is made in the presence of a representative of the director, the director may accept a certified copy of such test made by a person qualified to perform such tests, showing whether the device withstood the test without failures in any material respect and setting forth such other relevant information as the director may require. Until such a statement is so filed it shall be presumed that the device has not withstood the test as required.

(c) Nature of Test. Each passenger seat or space shall be weighted with at least ~~150~~ 170 pounds dead weight, except that in a device intended only for small children each seat or space shall be weighted with at least ~~75~~ 90 pounds as recommended by ASTM F 1159. While so loaded the device shall be so operated at maximum normal speed as to test the full operation or all control devices, speed limiting devices, brakes and other equipment provided for safety.

(d) Effect of Test. If the device fails to withstand a load test it shall be deemed unsafe and shall not be used until and unless it has withstood a subsequent load test without failure in any material respect. If the device has withstood a load test without failure in any material respect it shall be required to be so tested again only if rebuilt or modified or if there are reasonable grounds to believe that a further test is necessary to assure safety and the director orders such test to be made.

Statutory Authority G.S. 95-111.4.

.0404 LOCATION NOTICES

No amusement device shall be used at any time or location unless prior notice has been given to the director pursuant to G.S. 95-111.8. Notice shall include:

- (1) the name and permanent address of the operator,
- (2) the name and identification number of every amusement device, ~~and~~
- (3) the intended date(s) and location(s) of use, and
- (4) the date the inspection is requested.

Statutory Authority G.S. 95-111.4; 95-111.8.

.0406 UNSAFE DEVICES

If the inspector finds that the amusement device presents an imminent danger, he may attach to such device a notice warning all persons against the use thereof. Such notice shall not be removed until the device is made safe, and then only by a representative of the director. In the meantime, the device shall not be used and shall be dismantled and removed from the grounds.

Statutory Authority G.S. 95-111.4; 95-111.6; 95-111.9.

.0413 WIND AND STORM HAZARDS

The manufacturer or designer of amusement rides or devices shall post on the ride, in a prominent place, the maximum design wind speed for safe operation of the ride. An amusement device which is exposed to wind or storms shall not be operated under dangerous weather conditions except to release or discharge occupants.

Statutory Authority G.S. 95-111.4.

.0414 LIGHTING

(a) Amusement devices, access thereto and exits therefrom, shall, while in operation or occupied, be provided with illumination by natural or artificial means sufficient to guard against personal injuries under these circumstances.

(b) Lighting fixtures shall have their lamps guarded to protect against accidental contact and to reduce possible injury from glass if the lamps break. Fluorescent lamps installed on or over moving parts of a ride shall be covered with plastic sleeves.

Statutory Authority G.S. 95-111.4.

.0420 PUBLIC PROTECTION

An amusement device shall not be used or operated while any person is so located as to be endangered by it. Areas in which persons may be so endangered shall be fenced, barricaded, or otherwise guarded against public intrusion. Fences, when used to comply with this Rule, shall be at least 42 inches high and shall have essentially vertical mullions located to reject a ball six inches in diameter.

Statutory Authority G.S. 95-111.4.

.0424 ELECTRICAL SAFETY REQUIREMENTS

(a) General Requirements. All electrical wiring, equipment and apparatus used for amusement devices or for lighting shall comply with the National Electrical Code, NFPA 70 and shall be properly and legally installed, operated and maintained.

(1) Branch Circuits. The circuit for each ride shall be protected by fuses or a circuit breaker at the junction box or at the generator.

(2) Disconnecting Means. Each ride shall be provided with a main line disconnect switch or breaker. The disconnect switch or breaker shall be located at the ride. Each branch circuit on a ride shall be further provided with a disconnecting means.

(3) Conductors. Conductors supplying current to rides shall be of moisture resistant construction and insulated for the maximum voltage supplied to the ride.

(4) Grounding. Grounding of rides shall be by means of one or more grounding electrodes driven at the generator or other service. The grounding conductor to each junction box shall be of sufficient size to carry the maximum voltage generated by the system. Grounding conductors to each ride shall not be less than No. 8 awg. wire size.

(b) Protection of Employees. No employee shall be suffered or permitted to work in such proximity to any part of an electric power circuit that he may contact the same in the course of his work, unless he is protected against shock by de-energizing the circuit, grounding it or guarding it, by effective insulation. If protection is supplied by de-energizing the circuit, the switch controlling the circuit shall be locked out to prevent inadvertent closing.

(c) High Voltage Lines. The outlets of electric power lines carrying more than 120 volts shall be clearly marked to show their voltage.

(d) Transformers. All electrical transformer sub-stations shall be properly enclosed and proper warning signs posted.

(e) Outdoor Apparatus and Wiring. Electrical apparatus and wiring located outdoors shall be of such quality and so constructed or protected that exposure to weather will not interfere with its normal operation.

(f) Elevated Lines. Elevated power lines crossing access or other roads within the grounds of a carnival, fair or amusement park shall be so suspended as to provide minimum vertical clearance of 12 feet from the road surface and minimum horizontal clearance of three feet on each side of the normal passage space of vehicles.

(g) Grounding. Temporary electric installations shall be properly grounded.

(h) Exposed Conductors. Bare wires and other uninsulated current-carrying parts shall be guarded against inadvertent contact by means of proper location or by fence or other barrier.

(i) Overcurrent Protection. Conductors shall be provided with overcurrent protective devices according to load. No such device shall be installed in neutral or grounding conductors.

(j) Generator Grounding. Where electrical power is supplied for an amusement device or a temporary structure by a privately operated generating system, the generator and all equipment shall be properly grounded if the system incorporates a ground.

(k) Receptacles and Caps. All receptacles and attachment caps shall be of the ground type.

(l) Abrasion Protection. Wiring laid on surfaces traversed by vehicular or pedestrian traffic shall be adequately protected against wear and abrasion.

Statutory Authority G.S. 95-111.4.

.0429 GO KARTS

(a) Kart Design. The design of all karts manufactured after 1988 shall conform to all industry accepted standards of safety known and available at the time of manufacture. Karts manufactured prior to 1989 shall be upgraded to at least meet the 1989 standards. All karts shall comply with the following minimum standards.

(1) Numbering of Karts. Each shall be provided an identifying number that can be easily seen by the operator. A corresponding number shall be stamped or attached to the frame of the kart.

(2) Speed. Kart speed shall not exceed the maximum speed for which the track is designed. The speed of adult karts shall be set not to exceed 28 miles per hour unless approved by the Department. Kiddie karts shall not exceed 10 miles per hour. When a kart is designed to permit the readjustment of its maximum speed, the means of adjustment shall not be accessible to the driver of the kart.

(3) Seats. The seat, back rest, and leg area of all karts shall be designed to retain the driver/occupants inside the kart in the event of a roll over or a collision at the front, rear, or side of the kart. Karts not so designed shall be provided with seat belts and shoulder straps in compliance with Subparagraph (a)(13) of this Rule.

(4) Occupancy. Go karts shall be occupied by only one person at a time unless the

kart is designed and equipped with a seat and safety belt system that is intended and approved for two persons.

(5) Guarding of Parts. Rotating, moving, hot engine or muffler parts shall be guarded to prevent contact or entanglement of the occupant's hair, clothing, or other body parts.

(6) Brakes. Karts shall have a braking system designed and adjusted to permit them to be brought to a complete stop within 40 feet from maximum speed with their maximum weight on board.

(7) Brake and Throttle Controls. Karts shall have brake and throttle controls that are readily recognizable as to their function. The operator shall also instruct each driver on the operation of the brake and throttle controls before each operation. The controls shall return automatically to their non-operational position when released.

(8) Padding or Exposed Protruding Components. Karts shall have their steering wheel hub and all other protruding exposed parts within the driving compartment padded to minimize the risk of injury to an occupant in the event of a collision or overturn.

(9) Roll Bars and Head Rests. All adult karts must be provided with a roll bar of sufficient height and strength to provide the occupant with protection in the event of a roll over. Seats of all karts must be provided with a padded head rest. The head rest may substitute as a roll bar if it is of sufficient height and strength.

(10) Bumpers. Go karts shall be provided with impact absorbing bumpers or energy absorption body parts.

(11) Wheel Guards. The wheels of every kart shall be enclosed or guarded in such a manner that the wheels of another kart cannot interlock with or ride over them.

(12) Fuel Tanks. Kart fuel tanks shall be designed and mounted so that the tank cannot be ruptured in the event of a collision or a roll over.

(13) Seat Belts and Shoulder Straps. Karts not designed in accordance with Subparagraph (a)(3) of this Rule shall be provided with both seat belts and shoulder straps. They shall be mounted in a manner that will effectively restrain the occupant(s) in the vehicle in case of a collision or roll over. Properly mounted approved safety harnesses may be substituted for seat belts and shoulder straps.

(14) Noise Level. Karts shall be provided with muffler systems capable of limiting sound from the engine to 75 dBA when measured at a distance of 50 feet from the outer edge of the kart track.

(b) Track Design. Go kart track design shall incorporate all industry accepted standards of safety. Plans for proposed construction in the State of North Carolina shall be submitted to the North Carolina Department of Labor, Elevator and Amusement Device Division, 4 West Edenton Street, Raleigh, NC 27601, before construction begins. Buildings on the track site must be submitted to the local building inspection agency for approval. The design of the track shall be consistent with kart manufacturer's recommendations for the speed of the kart and be approved by the department. The following minimum requirements shall be complied with before certificates of operation will be issued.

(1) Track Layout. Go kart tracks may be oval shaped or of road course configurations. They may not be constructed in the shape of a figure eight or have any cross connected points. Straight portions of the track shall be essentially flat except that 2 degrees of banking may be provided for drainage. The width of all tracks shall be a minimum of 16 feet wide. Road courses may continue the same width for their entire length. Oval tracks shall have turns at least five feet wider than the straight portions and the minimum radius of the turns shall be 15 feet. Turns of oval tracks may be banked to a maximum of one inch for each one foot of track width. Any variation from the minimum track width shall be approved in advance.

(2) Track Surface. A kart track shall have a hard smooth surface. It shall provide sufficient road grip to be driven throughout the course at maximum speed. It shall be free of obstacles such as holes or bumps, or water or oil.

(3) Track Materials. Materials used in the surfacing of kart tracks shall be asphalt, concrete, or other solid and binding materials. Proposals to use dirt track surfaces shall be submitted for special consideration and evaluation.

(c) Track Safety and Guarding.

(1) Barriers. Every kart track shall provide properly constructed barriers along the entire course on both inside and outside of the track. Barriers shall be so constructed that a kart colliding with a barrier at maximum speed will come to a safe stop or be guided back to the track.

Earthen berms may be used as a barrier provided they will stop a kart safely. Bales of hay, straw, or other materials capable of being ignited may not be used as a barrier.

(2) Track Lanes. White or yellow lines, at least four inches wide, shall mark all inside and outside edges of the track.

(3) Fencing. The outside perimeter of a go kart track shall be protected by a fence at least 48 inches in height. The fence shall be set back at least 36 inches from the inside face of the track barrier. Gates shall be located for easy supervision by track attendants when the facility is open and they shall be kept locked when it is closed. The fence may be omitted where natural barriers provide the same degree of protection as the fence. Where two separate tracks are operated inside a single perimeter fence all karts on both tracks shall start and stop at the same time.

(4) Fire Extinguishers. Every go kart track shall be equipped with ABC Dry Chemical Fire Extinguishers. The extinguishers shall have a minimum capacity of five pounds (Ref. NFPA-10). At least one extinguisher shall be located in the following locations:

(A) Within seventy feet of every track section;

(B) In each pit area;

(C) In each refueling stop;

(D) In each kart storage area; and

(E) In the maintenance shop.

Each fire extinguisher location shall be prominently marked and the extinguisher shall be easily accessible.

(5) Refueling Area. Refueling of karts shall be carried out at a designated area remote from any area accessible to the public. Refueling areas shall comply with the requirements of the National Electrical Code (NFPA-70), Sections 510, 511, and 514.

(6) Track Lighting. Kart tracks equipped for night operation shall have sufficient illumination at all sections of the track for drivers to be able to negotiate the entire course safely. It shall also be sufficient for operators to monitor the karts on each section of the course. Lighting shall comply with the National Electrical Code (NFPA-70) and all other state and local requirements.

(7) Pits or Pit Areas. Where provided, pits must be fenced or provided with a sufficient barrier to prohibit the entry of spec-

- tators. Pits shall have separate entrance and exit lanes.
- (8) Spectator Areas. Spectator areas shall be separated from the track and pit areas by a fence or barrier sufficient to withstand the impact of a kart traveling at full speed. It shall be approximately level and free of holes or debris.
- (d) Track Operation. The following standards of operation shall apply to electric or fuel powered go karts, dune buggies, auto racers, and all terrain vehicles.
- (1) All karts must start and stop operation at the same time or a separate pit area shall be provided for loading and unloading purposes.
 - (2) Drivers of adult karts must be at least 48 inches (4 feet) tall and have a leg length sufficient to reach the brake and throttle controls when seated.
 - (3) Drivers of kiddie karts shall not exceed 54 inches (4 feet 6 inches) tall and must have a leg length sufficient to reach the brake and throttle controls when seated.
 - (4) Adult karts and kiddie karts shall not be operated simultaneously on the same track.
 - (5) No kart may be operated when weather conditions are such that it may affect the safe operation of the kart or when visibility on the track is less than 150 feet.
 - (6) Each section of a kart track shall be monitored during the time that any kart is in operation. Monitoring shall be by direct visual contact by the operator or track attendants or by electronic visual surveillance.
 - (7) A kart that is losing oil or fuel shall be immediately removed from the track.
 - (8) When the noise level of any kart exceeds the requirements of Subparagraph (a)(14) of this Rule, it shall be immediately removed from the track until it has been repaired.
 - (9) Safety equipment such as helmets (when used) and seat restraints shall be approved for the type of use or operation and be of correct size for the person using it.
 - (10) Persons with hair longer than shoulder length or wearing loose clothing that could obstruct the vision of the driver or become entangled in any moving part shall not be permitted to drive or ride a go kart. Long hair may be tied up to reduce its length.
 - (11) Persons whose behavior appears to be impaired by such as the use of drugs or alcohol shall not be permitted to drive a go kart.
 - (12) Smoking shall not be permitted while in the vicinity of a go kart.
 - (13) Track regulations shall not permit persons to leave their karts while any kart is in operation on the track.
 - (14) Signs containing the following information and other track regulations shall be posted at the track entrance or ticket window and conspicuously in the pit area.
 - (A) To drive or ride an adult kart you must be at least 48 inches tall.
 - (B) To drive a kiddie kart you may not be taller than 54 inches.
 - (C) Keep both hands on the wheel at all times.
 - (D) Keep both feet inside the kart.
 - (E) Hair longer than shoulder length must be tied up.
 - (F) All loose clothing must be tucked in.
 - (G) No smoking in kart or in pit area.
 - (H) Do not leave the kart while on the track.
 - (15) Signs that indicate the direction of travel for karts shall be posted at various locations around the track perimeter.
- (e) Inspections and Maintenance. Tracks and karts shall be inspected and maintained for a safe operation at all times. The following inspections shall be made:
- (1) The track shall be inspected daily for potholes, bumps or loose material. Necessary repairs shall be made before opening the track.
 - (2) Daily inspections shall be made on each kart prior to operation. The inspection shall include but not be limited to:
 - (A) Wheel and tires;
 - (B) Steering mechanism;
 - (C) Frame welds;
 - (D) Axles and spindles;
 - (E) Safety belts, roll bars, and seat padding;
 - (F) Gasoline tank, lines and valves;
 - (G) Brake and throttle operation; and
 - (H) Exhaust systems.
 - (3) Go kart maintenance shall be performed as recommended by the kart manufacturer or as approved by the North Carolina Department of Labor.

Statutory Authority G.S. 95-111.4.

TITLE 15A - DEPARTMENT OF
ENVIRONMENT, HEALTH, AND
NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environment, Health, and Natural Resources/Division of Land Resources intends to amend rule(s) cited as 15A NCAC 5B .0005.

The proposed effective date of this action is May 1, 1992.

The public hearing will be conducted at 10:00 a.m. on March 5, 1992 at the Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611.

Reason for Proposed Action: To add a condition which may be included in mining permits to require visual screening at mine sites between any affected land and any adjoining property containing occupied buildings or public access within view of the affected land.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Mr. Tracy E. Davis, Division of Land Resources, Land Quality Section, P. O. Box 27687, Raleigh, NC 27611-7687, (919) 733-4574. Please notify Mr. Davis prior to the public hearing if you desire to speak. Oral presentation lengths may be limited depending upon the number of people that wish to speak at the public hearing. Written comments will be received for 30 days after publication of the notice.

CHAPTER 5 - MINING: MINERAL RESOURCES

SUBCHAPTER 5B - PERMITTING AND REPORTING

.0005 CONDITIONS WHICH MAY BE INCLUDED IN PERMIT

To assure that the operation will comply fully with the requirements and objectives of the Mining Act of 1971, the director may approve an application or reclamation plan subject to certain conditions.

Such conditions of application approval may include:

- (1) additional erosion control measures to be installed during the mining operation;
- (2) a natural buffer to be left between any stream and the affected area; land;
- (3) visual screening such as existing natural vegetation, vegetated earthen berms, tree plantings at staggered spacing, etc. to be in-

stalled and maintained as feasible between any affected land and any adjoining property containing occupied buildings or public access within view of the affected land;

- (4) ~~(3)~~ erosion control measures to be taken during the construction and operation of all haul roads or access roads to minimize off-site damage from sediment;
- (5) ~~(4)~~ other conditions necessary to safeguard the adjacent surface resources or wildlife.

Statutory Authority G.S. 74-51; 74-63.

TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to adopt rule(s) cited as 16 NCAC 6G .0401 - .0403.

The proposed effective date of this action is June 1, 1992.

The public hearing will be conducted at 10:00 a.m. on March 6, 1992 at the 3rd Floor Board Room, Education Bldg., 116 West Edenton Street, Raleigh, NC 27603-1712.

Reason for Proposed Action: 1991 General Assembly enacted legislation relating to low performing school units and directed State Board to adopt implementing regulations.

Comment Procedures: Any interested person may submit views either in writing prior to or at the public hearing or orally at the hearing.

CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 6G - EDUCATION AGENCY RELATIONS

SECTION .0400 - LOW PERFORMING SCHOOL UNITS

.0401 DEFINITIONS

- (a) A "low performing school unit" is one that:
 - (1) does not meet 75 percent of the SBE accreditation standards at Level 1;
 - (2) ranks in the lower 23rd percentile in student achievement on the most recent Report Card issued by the SBE under the authority of G.S. 115C-12(9)c1; and
 - (3) has a dropout rate that is at least one standard deviation above the average

dropout rate for all school units in the state.

(b) A "school unit on warning status" is one that meets any two of the conditions described in Paragraph (a) of this Rule, except as provided in Rule .0403(i) of this Section.

Statutory Authority G.S. 115C-64.5.

.0402 IMPROVEMENT PLANS

(a) The SBE will determine which school units are to be designated either as low performing or on warning status by its February meeting of each year. The SBE will also notify those units of such designation immediately after the designation is made.

(b) The Department will notify units of services available to assist them immediately after those units are notified of their designation as low performing by the SBE. School units on warning status receive priority for technical assistance from the Department after that assistance has been provided to low performing units as described in this Rule. These services will be coordinated through the technical assistance center that serves the area where the school unit is located. The Department will provide additional funds to these units pursuant to G.S. 115C-64.2(b) from such discretionary funds as are available to the Department for this purpose.

(c) Each identified unit must submit an improvement plan to the Department by May 15 following identification, for transmittal to the SBE. The SBE will review plans and act upon requests for waivers under G.S. 115C-64.2(a) at its next regularly scheduled meeting. Identified units may submit additional requests for waivers to the SBE at any time that such waivers are needed.

(d) After the SBE has reviewed the improvement plan and has acted upon waiver requests, the Department will prepare and release the report for each identified unit as required by G.S. 115C-64.3(b).

Statutory Authority G.S. 115C-64.5.

.0403 CARETAKER ADMINISTRATORS AND BOARDS

(a) At its January meeting of each year, the SBE will review student performance data and student dropout rates for low performing school units for the two complete academic years that follow the unit's submission of an improvement plan under Rule .0402 of this Section. If the SBE finds that the unit has not made progress so as to have the low performing designation removed under Paragraph (i) of this Rule, the

Board will appoint a caretaker administrator, a caretaker board, or both. These appointments are effective the next working day following the appointment unless the SBE designates otherwise.

(b) Before appointing caretaker administrators or boards, the SBE will accept nominations from education-related organizations in the state. The SBE will establish a registry of caretaker administrator and board members from these and from names supplied by the SBE. The SBE will make appointments from this registry.

(c) Caretaker administrators serve under contract with the SBE. Caretaker board members serve at the pleasure of the SBE. Both caretaker administrators and board members are appointed for an initial term of two years and may be reappointed for additional one-year terms at the discretion of the SBE. The SBE may remove any person appointed under this Rule at any time for cause.

(d) Caretaker administrators appointed by the SBE are entitled to participate in the state retirement system and to earn and use vacation leave, sick leave, insurance and other benefits that are available to state employees.

(e) If the SBE appoints only caretaker administrators, those persons will perform all the powers and duties assigned by law to local superintendents and/or finance officers as specified in their contracts with the SBE.

(f) If the SBE appoints only a caretaker board, the Board will perform all the powers and duties assigned by law to local boards of education, including the appointment of administrators.

(g) If the SBE appoints both a caretaker board and one or more caretaker administrators, the administrators perform under the direction of the caretaker board.

(h) If the SBE appoints a caretaker board, the incumbent board members will retain their offices and elections shall continue to be held according to law, but the only duty of the incumbent board is to advise and assist the caretaker board. If the SBE appoints caretaker administrators, the incumbent board may determine whether to continue the employment of the incumbent administrators, but the incumbent board must pay the salaries of such administrators from local funds. The only duty of an incumbent administrator is to advise and assist the caretaker administrators.

(i) A low performing school unit may be removed from that designation and the operation of the unit will be returned to the local school board only if the SBE finds that the unit has met any two of the following three criteria:

- (1) the unit becomes eligible for state accreditation under Section .0200 of this Subchapter;
- (2) the unit reaches the state average range in overall achievement under the Report Card; and
- (3) the unit's student dropout rate has decreased to less than one standard deviation above the average dropout rate for all school units in the state.

Statutory Authority G.S. 115C-64.5.

TITLE 21 - OCCUPATIONAL LICENSING BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. State Board of Cosmetic Art Examiners intends to repeal rule(s) cited as 21 NCAC 14L .0107; and adopt rule(s) cited as 21 NCAC 14N .0101 - .0114, .0201 - .0202, .0301 - .0302, .0401 - .0402, .0501 - .0502.

The proposed effective date of this action is May 1, 1992.

The public hearing will be conducted at 10:00 a.m. on March 16, 1992 at the Grove Towers, Fifth Floor, 1110 Navaho Drive, Raleigh, N.C.

Reason for Proposed Action: 21 NCAC 14L .0107 - Material in this Rule is included in proposed adoption of 21 NCAC 14N .0113(d). 21 NCAC 14N .0101 - .0114, .0201 - .0202, .0301 - .0302, .0401 - .0402, .0501 - .0502 - This Cosmetic Art Board has never had examination rules, and it proposes these Examination Rules so the examination applicants and the public will know exactly what is expected for the Cosmetic Art Examinations.

Comment Procedures: The record shall be open for 30 days to receive written comments. Written comments should be received by the N.C. State Board of Cosmetic Art Examiners by March 20, 1992, to be considered as part of the hearing record. Comments should be addressed to Vicky R. Goudie, Executive Secretary, N.C. State Board of Cosmetic Art Examiners, 1110 Navaho Dr., Raleigh, N.C. 27609. Requests to speak must be in writing and received by March 11, 1992 prior to hearing. Speaking time 10 minutes.

CHAPTER 14 - BOARD OF COSMETIC ART EXAMINERS

SUBCHAPTER 14L - COSMETIC ART TEACHERS

SECTION .0100 - TEACHER QUALIFICATIONS AND EXAMINATIONS

.0107 PASSING SCORE RE-EXAMINATION

(a) An applicant must score at least 85 on each part of the appropriate teacher's examination to pass.

(b) An applicant who fails the examination twice may not take the examination again until the applicant takes additional cosmetology or manicurist courses or takes other steps to increase the likelihood that the applicant will pass the examination.

(c) The Board determines the adequacy of steps taken by an applicant pursuant to Paragraph (b) on a case by case basis, taking into consideration the amount by which the applicant failed the examination and other relevant factors.

Statutory Authority G.S. 88-23.

SUBCHAPTER 14N - EXAMINATIONS

SECTION .0100 - GENERAL PROVISIONS

.0101 TIME AND PLACE OF EXAMINATIONS

(a) The Board shall hold examinations in its offices in Raleigh.

(b) In addition to the examinations held in Raleigh pursuant to Paragraph (a) of this Rule, the Board shall conduct other examinations throughout the year at no less than three locations other than Raleigh.

(c) The Board shall announce the time and place for holding each examination at least ten work days prior to the date thereof.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-16; 88-17; 88-21(a)(16); 88-23; 88-30(4).

.0102 INITIAL APPLICATIONS AND FEES

(a) All applications for examination must be on a form provided by the Board.

(b) If an interpreter or other special arrangements are required, the initial application to take an examination must include, as appropriate:

(1) An application for an interpreter pursuant to 21 NCAC 14N .0106, or

(2) An application for special arrangements pursuant to 21 NCAC 14N .0107, or

(3) Both applications described in Subparagraphs (a)(1) and (2) of this Rule.

(c) The application must be filed with the Board and accompanied by the applicable examination fee. If the application is not signed or is

inadequately completed, or the proper supporting documentation is not enclosed, or the applicable fee is not paid, the application shall be deemed incomplete and returned.

(d) If the examination fee is paid by check or money order, the check or money order shall be made payable to the "Board of Cosmetic Art Examiners".

(e) If at all possible, the Board will schedule candidates whose properly completed applications are received by the 10th of one month to take the examination during the following month. The Board will assign the candidate to the location nearest to the candidate that is available for that month.

(f) Candidates for licensure as an apprentice cosmetologist shall take the cosmetologist examination.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-16; 88-17; 88-21(a)(16); 88-23; 88-30(4).

.0103 GENERAL EXAMINATION INSTRUCTIONS

(a) All candidates scheduled for an examination are required to bring:

- (1) their social security number,
- (2) a form of identification with a current picture,
- (3) a kit containing all supplies necessary to perform all services required by the examination, and
- (4) No. 2 pencils.

(b) Candidates for the cosmetologist examination shall bring either a live model or mannequin that conforms with the applicable requirements set forth in 21 NCAC 14N .0104 and .0105.

(c) Candidates for the cosmetologist teacher examination shall bring either four live models or four mannequins that conform with the applicable requirements set forth in 21 NCAC 14N .0104 and .0105; however, each candidate must provide a live model for the manicurist portion of the examination. These live models or mannequins shall be suitable for demonstrating the full range of services required by the cosmetology curriculum.

(d) Candidates for the manicurist or manicurist teacher examination shall bring a live model.

(e) Candidates will not be accepted after roll call.

(f) No candidates will be allowed to bring books, calculators, papers, or reference materials of any kind into the testing room, except as provided in Paragraph (g) of this Rule.

(g) Cosmetology teacher and manicurist teacher candidates may use visual aids, prepared in advance, during the practical examination.

During the lesson planning part of the examination, only a text book brought by that candidate may be used.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-16; 88-17; 88-21(a)(16); 88-23; 88-30(4).

.0104 LIVE MODEL REQUIREMENTS

(a) If, pursuant to 21 NCAC 14N .0103(b) or (c), a candidate has chosen to bring a live model for the examination, the model must:

- (1) be at least 18 years old,
- (2) submit to all cosmetic art services required by the examination, and
- (3) agree to a haircut of at least one to one and one-half inches during the examination. Hair must be of sufficient length to perform requirements after cutting. Prior to the examination, the model's hair must have already been shampooed, set and dried.

(b) A model brought by a candidate for the manicurist or manicurist teacher examination, pursuant to 21 NCAC 14N .0103(d) shall:

- (1) be at least 18 years old,
- (2) submit to all cosmetic art services required by the examination.

(c) Cosmetic art school or shop owners, registered or apprentice cosmetologists, manicurists, cosmetology or manicurist teachers, salon operators, and present or former cosmetology or manicurist students may not sit as models.

(d) No model may sit for more than one candidate at one exam.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-16; 88-17; 88-21(a)(16); 88-23; 88-30(4).

.0105 MANNEQUIN REQUIREMENTS

(a) If, pursuant to 21 NCAC 14N .0103(b) and (c), a candidate has chosen to bring a mannequin for the examination, the mannequin's hair shall be of sufficient length for the candidate to perform at least a one to one and one-half inch haircut. Hair shall be of sufficient length to perform requirements after cutting. The candidate shall bring a holder for the mannequin.

(b) Prior to the examination, the mannequin's hair shall have already been shampooed, set and dried.

(c) When a manicure is required during the cosmetologist examination, the candidate who has brought a mannequin rather than a model shall perform the manicure on another candidate.

(d) Except as provided in Paragraph (c) of this Rule, all required services shall be done on one mannequin.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-16; 88-17; 88-21(a)(16); 88-23; 88-30(4).

.0106 USE OF AN INTERPRETER

(a) A candidate whose native language is not English may apply for permission to bring an interpreter to the examination, if the candidate is unable to speak, read, or write English at a tenth grade level.

(b) The interpreter shall be:

- (1) 18 years old or older, and
- (2) fluent in both English and the candidate's native or other language.

(c) An interpreter shall not:

- (1) be currently or formerly licensed by this state or any state, nor have received or is receiving any training, in any branch of cosmetic art;
- (2) be a current or former owner or employee of any beauty establishment.

(d) The application for permission to use an interpreter shall be made on a form provided by the Board.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-16; 88-17; 88-21(a)(16); 88-23; 88-30(4).

.0107 SPECIAL ARRANGEMENTS FOR DISABLED

(a) If a candidate has a disability which will require special arrangements to take an examination, the candidate shall request such arrangements in his or her initial application for examination. The request for special arrangements shall be in writing and shall set out in sufficient detail what special arrangements are needed. The Board shall make reasonable accommodations for candidates requesting assistance under this Section.

(b) If reading assistance or an interpreter is required, the application for special arrangements shall also be accompanied by a letter from the candidate's cosmetic art school which documents the assistance the candidate required during classes there. If the candidate is unable to obtain a letter from a cosmetic art school, then the candidate shall submit a letter from a qualified professional as determined by the Board.

(c) In all other cases, the application for special arrangements shall be accompanied by a letter from a professional qualified to diagnose and document the disability.

(d) The candidate shall provide any special equipment or interpreters. An interpreter shall be 18 years of age or older and meet the requirements of 21 NCAC 14N .0106(a).

Statutory Authority G.S. 88-10(2); 88-12(2); 88-16; 88-17; 88-21(a)(16); 88-23; 88-30(4).

.0108 FAILURE TO APPEAR FOR EXAMINATION

(a) If a candidate fails to appear for the scheduled examination, the examination fee shall not be refunded.

(b) Notwithstanding Paragraph (a) of this Rule, the examination fee may be refunded to a candidate who has failed to appear for the examination if verification of good cause for failing to appear is mailed to the Board within seven days of the examination date.

(c) Determination of "good cause" under this Rule is within the Board's discretion.

(d) "Good cause" includes events beyond the control of the candidate which prohibited him or her from attending the examination. Examples of good cause are serious personal illness or accident, and death or serious illness in the immediate family.

(e) Acceptable verification of good cause is any written communication from a person not related to the candidate which would tend to support the candidate's stated reason for failing to attend the examination. Some examples of acceptable verifications would include a statement from an attending physician, an official accident report or an obituary notice.

(f) The license fee shall be credited to the candidate's account unless candidate notifies the Board in writing that he or she does not wish to re-apply. In that case, the license fee shall be refunded.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-16; 88-17; 88-21; 88-23; 88-30(4).

.0109 OBSERVATION OF EXAMINATION BY THIRD PARTIES

No visitors shall be allowed in the examination room during the examinations.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-16; 88-17; 88-21(a)(16); 88-23; 88-30(4).

.0110 PASSING GRADES FOR EXAMINATION

Candidates shall make the following grades on both the practical and theory sections of the examination:

- (1) For licensure as a registered cosmetologist, 75 percent;
- (2) For licensure as an apprentice cosmetologist, 70 percent;
- (3) For licensure as a cosmetology teacher, 85 percent;

- (4) For licensure as a manicurist teacher, 85 percent;
- (5) For licensure as a registered manicurist, 75 percent.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-17; 88-21(a)(16); 88-23; 88-30(4); 93B-8.

.0111 NOTIFICATION OF EXAM RESULTS

(a) The examination results shall be mailed to the candidate at the address on the application form within 30 days of the examination.

(b) If the candidate wishes to have the examination results mailed to an address different from the one on the application form, the new address shall be received by the Board within five days after the examination.

(c) Any cosmetology student who completed a 1500-hour course and failed to make the required 75 percent on both parts of the cosmetology examination, but scored at least 70 percent on both parts, may send a written request for an apprentice cosmetologist license, along with the required fee, instead of taking the exam again. In this case, the candidate shall not be given credit toward apprentice time until the date the written request and appropriate fee are received in the office. Notice shall be sent, with the license, advising the applicant of the starting date of the apprenticeship.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-16; 88-17; 88-21(a)(16); 88-23; 88-30(4).

.0112 REVIEW OF EXAMINATION

(a) A candidate who has failed the practical section of an examination may review his or her grading sheets for that section at the Board's office in Raleigh. However, a candidate may not review the theory section of an examination.

(b) A candidate who has passed both sections of an examination at any level may not review his or her examination papers.

(c) In order to review the practical section grading sheets for his or her examination, a candidate shall file a written request with the Board not more than 30 days after the date of notice of the examination results was mailed. If the request is received by the 10th of the month, the review will be the next month. Once a request is sent to the Board office, the Board will notify the candidate of an appointment time and date. The candidate shall confirm the time and date at least seven days before appointment time or time may be canceled.

(d) The review authorized by Paragraph (a) of this Rule shall be under the supervision of an authorized representative of the Board. No per-

son shall copy a question or answer contained in the examination report or alter an examination paper in any way.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-16; 88-17; 88-21(a)(16); 88-23; 88-30(4); 93B-8.

.0113 RE-EXAMINATION

(a) If, upon application for re-examination, the applicant has taken and passed one section of an examination, he or she shall apply for re-examination only on the section of the examination which he or she did not pass.

(b) Applicants for re-examination must apply for re-examination in writing and pay the appropriate examination fee.

(c) Notwithstanding any other provision of these Rules, pursuant to G.S. 88-16(4), a cosmetology candidate, having failed either section of the examination five times, is required to complete an additional 200 hours of study at an approved cosmetic art school before another application for re-examination may be accepted by the Board.

(d) Any candidate for the cosmetology teacher examination, who fails the examination twice, must meet the following requirements before taking the examination again:

(1) Any candidate who failed the practical portion must request an examination review, and must complete no less than 200 hours in a teacher training course.

(2) The course of study for that candidate must be designed to address the candidate's deficiencies.

(e) Upon written request by any candidate, the Board shall release a summary of the results of each category of the practical section of the most recent examination to the school in which the candidate is enrolled for the additional study, pursuant to G.S. 88-16(4) or Paragraph (d) of this Rule.

(f) The school in which the student has enrolled pursuant to G.S. 88-16(4) shall design a course of study for that student in order to correct the student's deficiencies. The course of study must be submitted to the Board for approval.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-16; 88-17; 88-21(a)(16); 88-23; 88-30(4).

.0114 FAILURE TO COMPLY WITH CHAPTER

(a) The examiner may dismiss from the examination any candidate who fails to comply with this Chapter or who disrupts the examination.

PROPOSED RULES

(b) With respect to fees only, a candidate who has been dismissed pursuant to Paragraph (a) of this Rule, will be treated as though the candidate has failed to appear.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-16; 88-17; 88-21(a)(16); 88-23; 88-30(4).

SECTION .0200 - COSMETOLOGIST EXAM

.0201 EXAMINATION - THEORY SECTION

(a) The theory section of the cosmetologist examination shall include the national theory examination of the National Interstate Council of State Boards of Cosmetology which covers all phases of cosmetic art, including hairdressing, manicuring and pedicuring, facial massage, and sanitation. The theory section also covers North Carolina laws governing the practice of cosmetic art.

(b) The candidate shall have two and one half hours to complete the theory section of the cosmetologist examination.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-17.

.0202 EXAMINATION - PRACTICAL SECTION

The practical section of the cosmetologist examination shall require the candidate to perform procedures which will test the basic knowledge and skills necessary to practice as a cosmetologist and shall be related to the curriculum required by the Board to be taught in approved cosmetic art schools to cosmetology students.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-17.

SECTION .0300 - MANICURIST EXAMINATION

.0301 EXAMINATION - THEORY SECTION

(a) The theory section of the manicurist examination shall include the national theory examination of the National Interstate Council of State Boards of Cosmetology which covers all phases of the art of manicuring, pedicuring and sanitation. The theory section will also cover North Carolina laws governing the practice of cosmetic art.

(b) The candidate shall have two and one-half hours to complete the theory section of the manicurist examination.

Statutory Authority G.S. 88-17; 88-30(4).

.0302 EXAMINATION - PRACTICAL SECTION

The practical section of the manicurist examination shall require the candidate to perform procedures which will test the basic knowledge and skills necessary to practice as a manicurist and shall be related to the curriculum required by the Board to be taught in approved cosmetic art schools to manicurist students.

Statutory Authority G.S. 88-17; 88-30(4).

SECTION .0400 - COSMETOLOGIST TEACHER EXAMINATION

.0401 EXAMINATION - THEORY SECTION

(a) The theory section of the cosmetology teacher examination shall include the national theory examination of the National Interstate Council of State Boards of Cosmetology which includes lesson plans, teaching techniques, teaching aids, testing, classroom management, and student motivation. The theory section will also cover North Carolina laws governing the practice of cosmetic art.

(b) The candidate shall have two and one-half hours to complete the theory section of the examination.

Statutory Authority G.S. 88-17; 88-21(e)(16); 88-23.

.0402 EXAMINATION - PRACTICAL SECTION

The practical section of the cosmetology teacher's examination shall require the candidate to perform procedures which will test the basic knowledge and skills of teaching techniques.

Statutory Authority G.S. 88-17; 88-21(a)(16); 88-23.

SECTION .0500 - MANICURIST TEACHER EXAMINATION

.0501 EXAMINATION - THEORY SECTION

(a) The theory section of the manicurist teacher examination shall include the national theory examination of the National Interstate Council of State Boards of Cosmetology, which includes lesson plans, teaching techniques, teaching aids, testing, classroom management, and student motivation. The theory section will also cover North Carolina laws governing the practice of cosmetic art.

(b) The candidate shall have two and one-half hours to complete the theory section of the examination.

Statutory Authority G.S. 88-17; 88-21(e)(16); 88-23.

PROPOSED RULES

**.0502 EXAMINATION - PRACTICAL
SECTION**

The practical section of the manicurist teacher's examination shall require the candidate to per-

form procedures which will test the basic knowledge and skills of teaching techniques.

Statutory Authority G.S. 88-17; 88-21(a)(16); 88-23.

Adopted rules filed by the Department of Revenue are published in this section. This department is not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.

Effective October 1, 1991, the Departments of Correction and Revenue are subject to G.S. 150B, Article 2A.

Upon request from the adopting agency, the text of rules will be published in this section.

**TITLE 17
DEPARTMENT OF REVENUE**

**CHAPTER 1
DEPARTMENTAL RULES**

SUBCHAPTER 1C - GENERAL ADMINISTRATION

SECTION .0400 - INTEREST REQUIREMENTS

.0402 ESTABLISHED INTEREST RATES

(a) For the calendar years 1978 and 1979, the Secretary of Revenue under authority of Subsection (i) of G.S. 105-241.1 has established an interest rate of six percent per annum in conformance with the adjusted rate established under Section 6621 of the United States Internal Revenue Code. The computation shall be at the rate of one-half percent per month or fraction thereof.

(b) For the calendar years 1980 and 1981, the Secretary of Revenue under authority of Subsection (i) of G.S. 105-241.1 has established an interest rate of twelve percent per annum in conformance with the adjusted rate established under Section 6621 of the United States Internal Revenue Code. The computation shall be at the rate of one percent per month or fraction thereof.

(c) For the calendar year 1983, the Secretary of Revenue under the authority of Subsection (i) of G.S. 105-241.1 has established on November 29, 1982 an interest rate of nine percent per annum. The computation shall be at the rate of three-fourths percent per month or fraction thereof.

(d) For the calendar year 1984, the Secretary of Revenue under the authority of Subsection (i) of G.S. 105-241.1 has established on November 29, 1983 an interest rate of nine percent per annum. The computation shall be at the rate of three-fourths percent per month or fraction thereof.

(e) For the calendar year 1985, the Secretary of Revenue under the authority of Subsection (i) of G.S. 105-241.1 has established on November 19, 1984 an interest rate of 9 percent per annum. The computation shall be at the rate of three-fourths percent per month or fraction thereof.

(f) For the calendar year 1986, the Secretary of Revenue under the authority of Subsection (i) of G.S. 105-241.1 has established on October 25, 1985 an interest rate of nine percent per annum. The computation shall be at the rate of three-fourths percent per month or fraction thereof.

(g) For the calendar year 1987, the Secretary of Revenue under the authority of Subsection (i) of G.S. 105-241.1 has established on November 18, 1986 an interest rate of nine percent per annum. The computation shall be at the rate of three-fourths percent per month or fraction thereof.

(h) For the calendar year 1988, the Secretary of Revenue under the authority of subsection (i) of G.S. 105-241.1 has established on November 30, 1987 an interest rate of nine percent per annum. The computation shall be at the rate of three-fourths percent per month or fraction thereof.

(i) For the calendar year 1989, the Secretary of Revenue under the authority of subsection (i) of G.S. 105-241.1 has established on November 18, 1988, an interest rate of nine percent per annum. The computation shall be at the rate of three-fourths percent per month or fraction thereof.

(j) For the period January 1, 1990 through June 30, 1990, the Secretary of Revenue under the authority of subsection (i) of G.S. 105-241.1 has established on November 20, 1989, an interest rate of nine percent per annum. The computation shall be at the rate of three-fourths percent per month or fraction thereof.

(k) For the period July 1, 1990 through December 31, 1990, the Secretary of Revenue under the authority of subsection (i) of G.S. 105-241.1 has established on June 1, 1990, an interest rate of nine percent per annum. The computation shall be at the rate of three-fourths percent per month or fraction thereof.

(l) For the period January 1, 1991 through June 30, 1991, the Secretary of Revenue under the authority of subsection (i) of G.S. 105-241.1 has established on December 3, 1990, an interest rate of nine percent per annum. The computation shall be at the rate of three-fourths percent per month or fraction thereof.

(m) For the period July 1, 1991 through December 31, 1991, the Secretary of Revenue under the authority of subsection (i) of G.S. 105-241.1 has established on June 21, 1991, an interest rate of nine percent per annum. The computation shall be at the rate of three-fourths percent per month or fraction thereof.

(n) For the period January 1, 1992 through June 30, 1992, the Secretary of Revenue under the authority of subsection (i) of G.S. 105-241.1 has established on November 15, 1991, an interest rate of eight percent per annum. The computation shall be at the rate of two-thirds percent per month or fraction thereof. This rate will remain in effect until a new rate is established.

*History Note: Statutory Authority G.S. 105-241.1; 105-262;
Eff. November 9, 1977;
Amended Eff. February 3, 1992; January 1, 1990;
January 1, 1989; February 1, 1988.*

RRC OBJECTIONS

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).

Temporary Rules are noted by “”. These Rules have already gone into effect.*

ADMINISTRATION

State Construction

<i>1 NCAC 30F .0101 - Authority</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>1 NCAC 30F .0103 - Definitions</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>1 NCAC 30F .0202 - Pre-Bid Conferences and Site Reviews</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>1 NCAC 30F .0301 - Definitions</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>1 NCAC 30F .0302 - Overall Job Performance</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>1 NCAC 30F .0303 - Interim Contractor Evaluation</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>1 NCAC 30F .0305 - Report Compilation</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>1 NCAC 30F .0401 - Post-Occupancy Evaluation</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>1 NCAC 30F .0403 - Appeals of Assigned Eval or Disqual from Bidding</i>	<i>RRC Objection</i>	<i>10/17/91</i>

State Employees Combined Campaign

<i>1 NCAC 35 .0103 - Organization of the Campaign</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
<i>1 NCAC 35 .0202 - Criteria for Acceptance</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
<i>1 NCAC 35 .0302 - Response</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>

AGRICULTURE

Plant Industry

<i>2 NCAC 48E .0101 - Definitions</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>12/19/91</i>

CRIME CONTROL AND PUBLIC SAFETY

State Highway Patrol

<i>14A NCAC 9H .0304 - Notifying Registered Owner</i>	<i>RRC Objection</i>	<i>12/19/91</i>
<i>No Response from Agency</i>	<i>No Action</i>	<i>01/24/92</i>

ECONOMIC AND COMMUNITY DEVELOPMENT

Credit Union Division

<i>4 NCAC 6C .0311 - Surety Bond and Insurance Coverage</i>	<i>RRC Objection</i>	<i>11/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/19/91</i>
<i>4 NCAC 6C .0401 - Delinquent Loans and Loan Losses</i>	<i>RRC Objection</i>	<i>11/21/91</i>
	<i>Obj. Removed</i>	<i>12/19/91</i>
<i>4 NCAC 6C .0402 - Charge-Off of Uncollectible Loans</i>	<i>RRC Objection</i>	<i>11/21/91</i>

RRC OBJECTIONS

<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/19/91</i>
4 NCAC 6C .0403 - Real Estate Loans	<i>RRC Objection</i>	<i>11/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/19/91</i>
4 NCAC 6C .0407 - Business Loans	<i>RRC Objection</i>	<i>01/24/92</i>
4 NCAC 6C .1301 - Liquidity Reserves	<i>RRC Objection</i>	<i>11/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/19/91</i>
Savings Institutions Division: Savings Institutions Commission		
4 NCAC 16A .0105 - Restrictions: Payment/Dividends Repurchase/Stock	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16C .0402 - Application: Guidelines/Approval/Administrator	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16C .0403 - General Policies	<i>RRC Objection</i>	<i>01/24/92</i>
4 NCAC 16D .0301 - General Policies	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16E .0103 - Composition of Board of Directors	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16E .0105 - Amendment of Converted Savings Bank's Charter	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16E .0301 - General Policies	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16E .0303 - Required Policies	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16E .0502 - Holding of Certificate or Passbook	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16G .0404 - Information Prior To Approval Plan Conversion	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16G .0510 - Use of Proxy Soliciting Material to be Authorized	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16G .0513 - Material Required to be Filed	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16G .0714 - Estimated Price Information: Proxy Statements	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16G .0720 - Period for Completion of Sale	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16G .0722 - Extensions of Time to Complete Offerings	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16G .0825 - Requirements as to Paper and Printing	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rules</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16H .0002 - Grounds	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16H .0008 - Waiver	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16I .0702 - Definitions and Other Terms	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16I .0703 - Stds for Approval of Acquisition: Duties Conduct	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16I .0902 - Acquisition Procedure	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16I .1003 - Acquisition Procedure	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
4 NCAC 16I .1202 - Conversion Procedure	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>

RRC OBJECTIONS

4 NCAC 16J .0003 - Waiver	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16K .0001 - Definitions	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16K .0005 - Books and Accounts	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16K .0009 - Self-Dealing	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16K .0010 - Custody of Investments	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16L .0004 - Waiver	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92

EDUCATION

Elementary and Secondary Education

16 NCAC 6D .0103 - Graduation Requirements	ARRC Objection	9/19/91
No Response from Agency		10/17/91
Agency Revised Rule	Obj. Removed	12/19/91

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

15A NCAC 7H .0306 - General Use Standards for Ocean Hazard Areas	RRC Objection	01/24/92
Agency Responded	No Action	01/24/92
Rule Returned to Agency		01/24/92
Agency Filed Rule with OAH	Eff.	03/01/92
15A NCAC 7J .0402 - Criteria for Grant or Denial of Permit Applications	RRC Objection	10/17/91
15A NCAC 7M .0201 - Declaration of General Policy	RRC Objection	10/17/91
Agency Responded	No Action	12/19/91
Agency Responded	No Action	01/24/92
Rule Returned to Agency		01/24/92
Agency Filed Rule with OAH	Eff.	03/01/92
15A NCAC 7M .0202 - Policy Statements	RRC Objection	10/17/91
Agency Responded	No Action	12/19/91
Agency Responded	No Action	01/24/92
Rule Returned to Agency		01/24/92
Agency Filed Rule with OAH	Eff.	03/01/92
15A NCAC 7M .0303 - Policy Statements	RRC Objection	10/17/91
Agency Responded	No Action	12/19/91
Agency Responded	No Action	01/24/92
Rule Returned to Agency		01/24/92
Agency Filed Rule with OAH	Eff.	03/01/92
15A NCAC 7M .0403 - Policy Statements	RRC Objection	10/17/91
Agency Responded	No Action	12/19/91
Agency Responded	No Action	01/24/92
15A NCAC 7M .0901 - Declaration of General Policy	RRC Objection	10/17/91
Agency Responded	No Action	12/19/91
Agency Responded	No Action	01/24/92
Rule Returned to Agency		01/24/92
Agency Filed Rule with OAH	Eff.	03/01/92

Health: Epidemiology

RRC OBJECTIONS

15A NCAC 19A .0202 - Control Measures - HIV
15A NCAC 19H .0702 - Research Requests
Agency Revised Rule

RRC Objection 10/17/91
RRC Objection 11/21/91
Obj. Removed 12/19/91

Sedimentation Control

15A NCAC 4A .0005 - Definitions
Agency Responded
15A NCAC 4C .0007 - Procedures: Notices
Agency Responded

RRC Objection 12/19/91
No Action 01/24/92
RRC Objection 12/19/91
No Action 01/24/92

HUMAN RESOURCES

Facility Services

10 NCAC 3J .2905 - Personal Hygiene Items
10 NCAC 3W .0101 - State Cert for Labs Conducting Pap Smears
Agency Revised Rule
10 NCAC 3W .0201 - State Cert of Screening Mammography Svcs
Agency Revised Rule

RRC Objection 10/17/91
RRC Objection 01/24/92
Obj. Removed 01/24/92
RRC Objection 01/24/92
Obj. Removed 01/24/92

Individual and Family Support

10 NCAC 42E .0905 - Personnel: Centers: Homes with Operator/Staff
10 NCAC 42E .0906 - Personnel: Day Care Homes: Staff Person/Op
10 NCAC 42E .1108 - Records
Agency Revised Rule
10 NCAC 42E .1207 - Procedure
10 NCAC 42Z .0604 - Staff Requirements
10 NCAC 42Z .0901 - Procedure

RRC Objection 01/24/92
RRC Objection 01/24/92
RRC Objection 01/24/92
Obj. Removed 01/24/92
RRC Objection 01/24/92
RRC Objection 01/24/92
RRC Objection 01/24/92

Mental Health: General

10 NCAC 14S .0102 - Communication Rights
Agency Responded
10 NCAC 14S .0103 - Living Environment
Agency Responded

ARRC Objection 9/19/91
10/17/91
ARRC Objection 9/19/91
10/17/91

INSURANCE

Life and Health Division

11 NCAC 12 .0507 - Fraternal Orders: Societies and Associations
Agency Revised Rule
11 NCAC 12 .0826 - Filing Requirements for Advertising
Agency Revised Rule
11 NCAC 12 .1202 - Definitions
Agency Revised Rule
11 NCAC 12 .1209 - Discrimination
Agency Revised Rule

RRC Objection 12/19/91
Obj. Removed 01/24/92
RRC Objection 01/24/92
Obj. Removed 01/24/92
RRC Objection 12/19/91
Obj. Removed 01/24/92
RRC Objection 12/19/91
Obj. Removed 01/24/92

LICENSING BOARDS AND COMMISSIONS

Certified Public Accountant Examiners

* 21 NCAC 8G .0313 - Firm Name
Agency Responded

RRC Objection 10/17/91
No Action 12/19/91

RRC OBJECTIONS

Electrolysis Examiners

* 21 NCAC 19 .0202 - App/Licensure//Electrologist Practicing/1/1/92
Agency Revised Rule

RRC Objection 11/21/91
Obj. Removed 12/19/91

STATE PERSONNEL

Office of State Personnel

25 NCAC 1L .0301 - Purpose
Agency Withdrew Rule

RRC Objection 11/21/91
12/19/91

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

15A NCAC 7J .0301 - WHO IS ENTITLED TO A CONTESTED CASE HEARING

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 7J .0301(b) void as applied in *Lucy R. Hanson, Stanley P. and Jean C. Szwed, Petitioners v. N.C. Department of Environment, Health, and Natural Resources, Division of Coastal Management, Respondent* (91 EHR 0551, 91 EHR 0557).

15A NCAC 21D .0802(b)(2) - AVAILABILITY

Robert Roosevelt Reilly Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 21D .0802(b)(2) void as applied in *Wilson's Supermarket #12, Petitioner v. Department of Environment, Health, and Natural Resources, Respondent* (91 EHR 0795).

15A NCAC 21D .0805 - DECISION

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 21D .0805 void as applied in *Glenn E. Davis/Davis Grocery, Petitioner v. N.C. Department of Environment, Health, and Natural Resources, Division of Maternal and Child Health, WIC Section, Respondent* (91 EHR 0694).

NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Architecture	2
2	Agriculture	Auctioneers	4
3	Auditor	Barber Examiners	6
4	Economic and Community Development	Certified Public Accountant Examiners	8
5	Correction	Chiropractic Examiners	10
6	Council of State	General Contractors	12
7	Cultural Resources	Cosmetic Art Examiners	14
8	Elections	Dental Examiners	16
9	Governor	Electrical Contractors	18
10	Human Resources	Electrologists	19
11	Insurance	Foresters	20
12	Justice	Geologists	21
13	Labor	Hearing Aid Dealers and Fitters	22
14A	Crime Control and Public Safety	Landscape Architects	26
15A	Environment, Health, and Natural Resources	Landscape Contractors	28
16	Public Education	Marital & Family Therapy	31
17	Revenue	Medical Examiners	32
18	Secretary of State	Midwifery Joint Committee	33
19A	Transportation	Mortuary Science	34
20	Treasurer	Nursing	36
*21	Occupational Licensing Boards	Nursing Home Administrators	37
22	Administrative Procedures	Occupational Therapists	38
23	Community Colleges	Opticians	40
24	Independent Agencies	Optometry	42
25	State Personnel	Osteopathic Examination and Registration (Repealed)	44
26	Administrative Hearings	Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating and Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Practicing Counselors	53
		Practicing Psychologists	54
		Professional Engineers and Land Surveyors	56
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
		Social Work	63
		Speech and Language Pathologists and Audiologists	64
		Veterinary Medical Board	66

Note: Title 21 contains the chapters of the various occupational licensing boards.

CUMULATIVE INDEX

CUMULATIVE INDEX (April 1991 - March 1992)

1991 - 1992

Pages	Issue
1 - 44.....	1 - April
44 - 99.....	2 - April
100 - 185.....	3 - May
186 - 226.....	4 - May
227 - 246.....	5 - June
247 - 325.....	6 - June
326 - 373.....	7 - July
374 - 463.....	8 - July
464 - 515.....	9 - August
516 - 677.....	10 - August
678 - 721.....	11 - September
722 - 783.....	12 - September
784 - 923.....	13 - September
924 - 980.....	14 - October
981 - 1107.....	15 - November
1108 - 1275.....	16 - November
1276 - 1300.....	17 - December
1301 - 1423.....	18 - December
1424 - 1503.....	19 - January
1504 - 1562.....	20 - January
1563 - 1636.....	21 - February
1637 - 1741.....	22 - February

- AO - Administrative Order
- AG - Attorney General's Opinions
- C - Correction
- FR - Final Rule
- GS - General Statute
- JO - Judicial Orders or Decision
- M - Miscellaneous
- NP - Notice of Petitions
- PR - Proposed Rule
- SO - Statements of Organization
- TR - Temporary Rule

ADMINISTRATION

State Construction, 465 PR

State Employees Combined Campaign, 924 PR

ADMINISTRATIVE HEARINGS

Hearings Division, 310 PR

Rules Division, 665 PR

ADMINISTRATIVE ORDER

Administrative Order, 926 AO

AGRICULTURE

Food and Drug Protection Division, 576 PR, 725 PR, 1303 PR
Markets, 576 PR, 1642 PR
North Carolina State Fair, 576 PR
Pesticide Board, 725 PR
Plant Industry, 102 PR, 469 PR, 576 PR, 1642 PR
Structural Pest Control Division, 1569 PR
Veterinary Division, 1645 PR

CORRECTION

Division of Prisons, 35 FR, 87 FR, 209 FR, 700 FR, 938 FR

CRIME CONTROL AND PUBLIC SAFETY

State Highway Patrol, Division of, 809 PR

CULTURAL RESOURCES

Archives and History, 932 PR
State Library, 686 PR

ECONOMIC AND COMMUNITY DEVELOPMENT

Alcoholic Beverage Control Commission, 4 PR, 1648 PR
Banking Commission, 1424 PR
Community Assistance, 104 PR, 1579 PR
Credit Union Division, 231 PR, 683 PR, 1108 PR
Employment and Training, 590 PR
Savings Institutions Division, 984 PR

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management, 299 PR, 1139 PR
Departmental Rules, 1513 PR
Environmental Management, 197 PR, 271 PR, 447 PR, 1061 PR, 1315 PR, 1520 PR, 1611 PR
Forest Resources, 300 PR
Governor's Waste Management Board, 1277 PR
Health: Epidemiology, 28 PR, 341 PR, 735 PR, 1279 PR
Health Services, 9 PR, 327 PR, 727 PR, 815 PR, 1452 PR
Land Resources, 494 PR, 810 PR, 1720 PR
Marine Fisheries, 122 PR, 690 PR
Parks and Recreation, 693 PR
Radiation Protection, 1367 PR
State Registrar, 734 PR
Water Treatment Facility Operators, 495 PR
Wildlife Resources Commission, 84 PR, 170 PR, 198 PR, 301 PR, 647 PR, 692 PR, 1062 PR, 1323 PR, 1542 PR, 1619 PR, 1637 C

FINAL DECISION LETTERS

Voting Rights Act, 48, 230, 248, 326, 464, 516, 681, 722, 806, 927, 1301, 1505, 1566, 1640

GENERAL STATUTES

Chapter 150B, 784 GS

GOVERNOR/LT. GOVERNOR

Executive Orders, 1, 45, 100, 186, 227, 247, 374, 678, 804, 924, 981, 1276, 1504, 1563

HUMAN RESOURCES

Aging, Division of, 72 PR, 422 PR
Blind, Services for, 686 PR

Departmental Rules, 1114 PR
Economic Opportunity, 604 PR, 689 PR
Facility Services, 104 PR, 471 PR, 592 PR, 1035 PR, 1443 PR, 1584 PR
Medical Assistance, 9 PR, 112 PR, 188 PR, 232 PR, 250 PR, 430 PR, 492 PR, 601 PR, 688 PR, 726 PR, 807 PR, 932 PR, 1036 PR, 1277 PR, 1452 PR, 1703 PR
Mental Health, Developmental Disabilities and Substance Abuse Services, 5 PR, 49 PR, 375 PR, 449 PR, 1446 PR
Social Services, 116 PR, 1039 PR, 1607 PR

INDEPENDENT AGENCIES

Housing Finance Agency, 1484 PR
Safety and Health Review Board of North Carolina, 1069 PR

INSURANCE

Actuarial Services Division, 119 PR, 1060 PR
Agent Services Division, 1056 PR, 1303 PR
Engineering and Building Codes, 1704 PR
Financial Evaluation Division, 933 PR, 1308 PR
Life and Health Division, 430 PR, 1114 PR
Property and Casualty Division, 1509 PR
Special Services Division, 84 PR

JUSTICE

Criminal Justice Education and Training Standards, 607 PR
Private Protective Services, 121 PR
Sheriffs' Standards Division, 618 PR
State Bureau of Investigation, 250 PR

LABOR

Boiler and Pressure Vessel, 1310 PR
Elevator and Amusement Device Division, 1712 PR
Occupational Safety and Health, 1138 PR, 1309 PR

LICENSING BOARDS

Architecture, Board of, 30 PR, 232 PR
Certified Public Accountant Examiners, 201 PR, 935 PR, 1141 PR
Cosmetic Art Examiners, 653 PR, 1066 PR, 1723 PR
Electrolysis Examiners, Board of, 737 PR
Geologists, Board of, 654 PR
Hearing Aid Dealers and Fitters, 496 PR, 655 PR
Landscape Contractors' Registration Board, 665 PR
Medical Examiners, Board of, 304 PR, 363 PR, 935 PR
Nursing, Board of, 305 PR
Optometry, Board of Examiners, 1068 PR
Pharmacy, Board of, 201 PR, 1480 PR
Physical Therapy Examiners, Board of, 33 PR, 363 PR
Practicing Psychologists Examiners, 203 PR
Professional Engineers and Land Surveyors, 497 PR
Real Estate Commission, 171 PR, 500 PR, 1546 PR

LIST OF RULES CODIFIED

List of Rules Codified, 89, 215, 314, 451, 504, 711, 907, 1087, 1281, 1487, 1624

PUBLIC EDUCATION

Elementary and Secondary, 29 PR, 199 PR, 303 PR, 694 PR, 1140 PR, 1721 PR

REVENUE

Corporate Income and Franchise Tax Division, 816 FR
Departmental Rules, 968 FR, 1729 FR

CUMULATIVE INDEX

Individual Income, Inheritance and Gift Tax Division, 739 FR
Individual Income Tax Division, 234 FR, 747 FR
Intangibles Tax Division, 766 FR, 969 FR
License and Excise Tax Division, 740 FR, 969 FR
Motor Fuels Tax Division, 768 FR, 1620 FR
Property Tax Commission, 210 FR
Sales and Use Tax, 817 FR

SECRETARY OF STATE

Securities Division, 85 PR

STATE PERSONNEL

Office of State Personnel, 696 PR, 1082 PR, 1485 PR
State Personnel Commission, 172 PR, 364 PR

STATE TREASURER

Retirement Systems, 736 PR

STATEMENTS OF ORGANIZATION

Statements of Organization, 518 SO

TAX REVIEW BOARD

Orders of Tax Review Board, 1641

TRANSPORTATION

Assistant Secretary For Management, 1254 FR
Assistant Secretary For Planning, 1259 FR
Departmental Rules, 1142 FR
Division of Highways, 1146 FR
Division of Motor Vehicles, 213 FR, 502 FR, 701 FR, 773 FR, 1229 FR, 1545 PR

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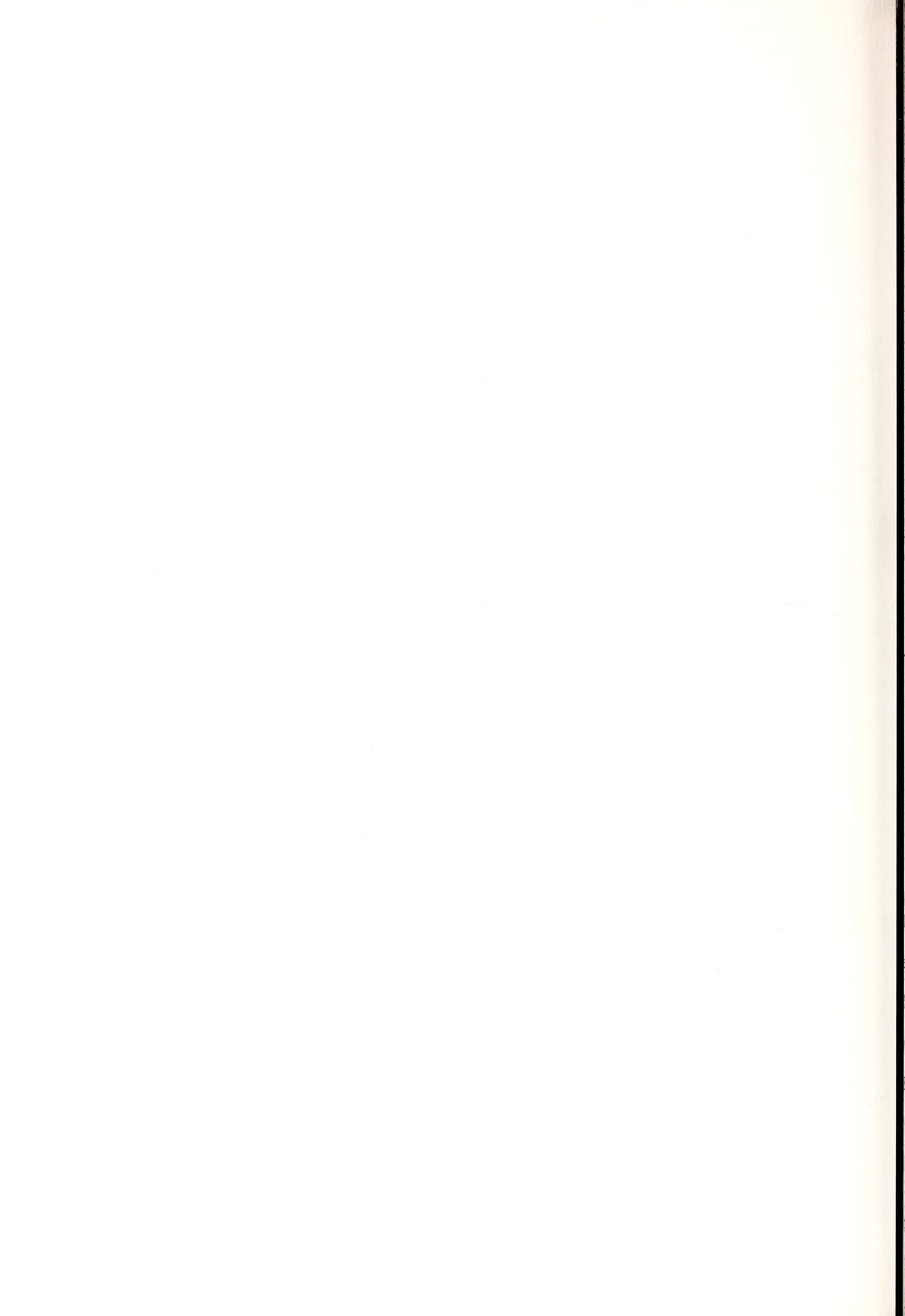
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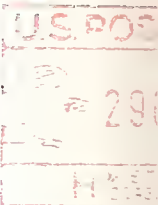
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